UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/114/Add.1
20 August 1998

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1996

Addendum

THE REPUBLIC OF KOREA*

[2 October 1997]

* For the initial report submitted by the Republic of Korea, see CCPR/C/68/Add.12; for its consideration by the Committee, see CCPR/C/SR.1150, 1151 to 1154 and Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), paras. 470-528.

GE.98-17776 (E)

BEST COPY AVAILABLE

CONTENTS

	Paragraphs	Page
Introduction	1 - 4	3
I. GENERAL COMMENTS	5 - 16	3
II. INDIVIDUAL ARTICLES OF THE COVENANT	17 - 254	6
Article 1	17 - 20	6
Article 2	21 - 33	6
Article 3	34 - 66	10
Article 4	67 - 70	17
Article 5	71 - 72	18
Article 6	73 - 89	18
Article 7	90 - 100	22
Article 8	101 - 105	24
Article 9	106 - 119	25
Article 10	120 - 144	28
Article 11	145	33
Article 12	146 - 150	33
Article 13	151 - 152	34
Article 14	153 - 174	34
Article 15	175 - 176	39
Article 16	177 - 178	40
Article 17	179 - 185	40
Article 18	186 - 194	42
Article 19	195 - 208	43
Article 20	209 - 212	46
Article 21	213 - 215	47
Article 22	216 - 227	48
Article 23	228 - 236	51
Article 24	237 - 248	52
Article 25	249 - 254	55
Article 26	255 - 256	56
Article 27	257 - 258	57

Introduction

1. In July 1991, the Republic of Korea submitted to the Secretary-General of the United Nations its initial report pursuant to article 40, paragraph 1 (a), of the International Covenant on Civil and Political Rights. The Human Rights Committee examined the report in July 1992. Taking into account the "Guidelines regarding the form and content of periodic reports from States parties" and the Committee's discussions on the initial report, the Republic of Korea submits this second periodic report describing measures it has taken, mainly legislative and institutional, to implement the Covenant in the five years following the initial reports submission. This report covers the period from July 1991 to July 1996.

2. One of the major changes the Republic of Korea has experienced since the submission of the initial report is the establishment of a new civilian Government in February 1993. The new Government, with the full support and encouragement of the people, has taken various initiatives for reform and change.

3. Legal and institutional policies to promote human rights have provided for, among others, stringent rules governing detention, increased right to counsel, expanded legal assistance for the underprivileged, and the extension of welfare entitlements for women and the handicapped. Continued efforts have been made in the past few years to build a more democratic society committed to justice and respect for human rights. They include: better promotion of democracy through the extensive application of the principle of local autonomy, substantial expansion of political rights through the enforcement of an integrated election act, and enhancement of economic fairness through the introduction of the Real Name System in the financial and real estate sectors. However, there remains more to be done to promote human rights, and the Republic of Korea is striving continuously to improve the situation.

4. In aiming to provide accurate information on the situation in the Republic of Korea, the present report illustrates measures taken by the Government of the Republic of Korea and elucidates the aspects to be strengthened in the protection of human rights.

I. GENERAL COMMENTS

Constitutional protection of human rights in the Republic of Korea

5. The Republic of Korea is a democratic republic under a presidential system and is based on the principle of checks and balances. Sovereignty rests with the people. The National Assembly, the Administration, and the Court are vested with legislative, executive and judicial powers respectively. The National Assembly is composed of popularly elected representatives. As the sole legislative organ, it exercises its legislative power to protect the freedoms and rights of the people. To prevent the abuse of executive powers, the National Assembly has the authority to impeach the President and other senior officials, to recommend the dismissal of the Prime Minister and others, and to inspect and investigate State affairs. The Administration implements the laws enacted by the National Assembly and takes all possible administrative measures to protect the rights of the people. The Court

provides relief when the rights of the people have been infringed, and it is the ultimate guardian of the fundamental rights. A court judge rules on the basis of the Constitution and related laws, and according to his or her conscience. The status of a court judge is guaranteed by law.

6. The present Constitution of the Republic of Korea provides for the Constitutional Court, which is the ruling body on constitutional petitions. Persons whose constitutional rights have been infringed through the exercise or non-exercise of public powers, may seek remedy from the Court. The Constitutional Court also has the authority to overturn unconstitutional laws, hence effectively discharging its role as the protector of fundamental rights.

7. The Constitutional Court is composed of nine judges, who are appointed by the President from a list of eligible court judges. In order to maintain the political neutrality of the Court, three of the nine judges are recommended by the National Assembly and three are nominated by the Chief Justice. In order to allow a judge of the Constitutional Court to rule according to the Constitution and his or her conscience, he or she is appointed for life, and may only be removed from office by impeachment or imprisonment.

8. Since the time of its establishment in September 1988 until June 1996, the Constitutional Court has ruled 67 laws unconstitutional. Of these, 43 have already been revised to reflect the Court's decisions; the remaining 24 laws, which are in the process of being revised, have been suspended by the relevant agencies. In addition, the Court revoked 34 non-indictment dispositions of the public prosecutor. A number of administrative measures have also been declared unconstitutional. These decisions have furthered the protection of citizens' fundamental rights.

The Covenant in relation to the domestic laws of the Republic of Korea

9. Article 6, paragraph 1, of the Constitution provides that "treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea". As the Covenant was ratified and promulgated by the Government in consent with the National Assembly, it has the authority of domestic law without requiring additional legislation. Accordingly, the Administration and the Court are obliged to observe the Covenant when exercising their powers. Most rights guaranteed by the Covenant are guaranteed by the Constitution. Article 37, paragraph 1, of the Constitution provides that "freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution". Therefore, the Covenant is to be respected, even if not directly stipulated in the Constitution. In the event that a law enacted prior to the Covenant's ratification conflicts with its provisions, the Covenant has greater authority. No law enacted in the Republic of Korea may encroach on the rights provided in the Covenant; any such law would be viewed as unconstitutional.

10. If a person files a suit citing encroachment of rights guaranteed by the Covenant, the Court is to rule primarily on the basis of domestic law corresponding to the Covenant. In the absence of relevant domestic law, the provisions of the Covenant are to be invoked directly by the Court. In a

decision on a constitutional petition concerning whether the demand for a notice of apology aimed at regaining one's reputation infringes on an individual's freedom of conscience, the Constitutional Court invoked directly the Covenant: "Article 18, paragraph 2, of the International Covenant on Civil and Political Rights provides that no one shall be subject to coercion which would impair his or her freedom to have a belief of his or her choice" (Decision 89 HEONMA 160 of 4 April 1991).

11. At the time of the Covenant's ratification, the Republic of Korea expressed reservations to article 14, paragraphs 5 and 7, article 22 and article 23, paragraph 4; but reservations to article 23, paragraph 4, were withdrawn on 15 March 1991 and reservations to article 14, paragraph 7, were retracted on 21 January 1993.

Advocacy of the Covenant

12. Since its accession to the Covenant and submission of the initial report, the Government has exerted great efforts to inform its citizens of the contents of the Covenant. The Covenant has been widely publicized through "Law and Living", a booklet intended to familiarize all citizens with law in everyday life. This booklet includes the main contents of the Covenant and the obligations of the contracting parties are reproduced therein. Annual circulation since 1992 is 100,000 copies.

13. The original text and Korean translation of 14 major international human rights treaties were reproduced and distributed in February 1994 under the title, "Collected Materials on International Human Rights Treaties". This publication was followed in December 1995 by the publication and distribution of the volume, "International Human Rights Covenants and Individual Petition", which explains the requirements and procedures for individual petition to the Human Rights Committee for persons whose Covenant rights have been infringed. In addition, officials of all ranks engaged in human rights-related work, including those of the public prosecutor's office, the police and the correction agency, are continuously educated so as to realize the ideals embodied in the Covenant.

14. "International Human Rights Law" will become part of the 1997 curriculum at the Judicial Research and Training Institute, where public prosecutor and judiciary candidates, who have passed the bar examination, are trained for a period of two years before being conferred with their lawyers' licence and being appointed as public prosecutors or judges. Lectures will be offered on the main features of the Covenant as well as on remedies for individuals whose Covenant rights were infringed.

15. Moreover, the Ministry of Justice is launching a programme to bring law closer to everyday life: an outline of the Covenant is given at lectures and symposia, and the ideals of the Covenant are publicized when legal aid services are provided to residents of small and medium-sized cities, and to those from farming and fishing communities.

16. The Government organizes a Human Rights symposium every year around 10 December, the anniversary of the Universal Declaration of Human Rights. Discussions were held on "Disclosure of information and protection of

human rights in modern societies" in 1991, "Environmental problems and human rights" in 1992, "Industrial accidents and human rights of the handicapped" in 1993, "Victims of crimes and human rights" in 1994, and "Women and human rights" in 1995. These symposia played a great role in inspiring respect for the principle of human rights protection.

II. INDIVIDUAL ARTICLES OF THE COVENANT

Article 1

17. The right of self-determination, as set forth in article 1 of the Covenant, was supported by the international society as a universal right applicable to all peoples regardless of race, religion, region, etc. In accordance with the Charter of the United Nations and article 1 of the Covenant, the Republic of Korea has, as stated in the initial report, consistently recognized the right of self-determination. The preamble and article 5, paragraph 1, of the Constitution declare that the Republic of Korea will contribute to world peace. These paragraphs also emphasize that the use of force shall not be tolerated to guarantee the right of self-determination in the international community. The Government considers it the basis of its foreign policy to cooperate with various international and diplomatic efforts to help all peoples fully realize their right to self-determination.

18. The Republic of Korea respects not only the right of self-determination at the national level, but also the right of persons forming a State to determine freely their own political status and to pursue economic, social and cultural development. Nationals of the Republic of Korea hold the right to express their thoughts freely and determine their political status through voluntary, fair, universal and confidential voting.

19. The Government is also active at the international level. To expedite the solution of the Palestinian question in relation to the right of self-determination, a subject of much concern to the international community, the Government pledged in April 1994 a contribution of US$ 12 million. Consequently, the Government announced a plan to provide US$ 10 million in the form of a soft loan of the Korean EDCF (Economic Development Cooperation Fund) and US$ 21 million in grants-in-aid. Furthermore, at the Paris ministerial conference on Palestinian aid in January 1996, the Government announced it would dedicate an additional grant of US$ 3 million. In addition, the Government also contributed US$ 100,000 to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

20. In addition, the Government is also pleased to have played a part in the success of the worldwide effort to end the apartheid policy of South Africa, thus exercising a positive influence on the promotion of self-determination at the international level.

Article 2

21. Article 11, paragraph 1, of the Constitution provides that "all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status" - in other words, the principle that every person is entitled

to non-discrimination regarding protection and guarantee of his or her rights. Specific types of discrimination for reasons of sex, religion or social status are mentioned as examples only, and discrimination due to other factors such as race, colour, language, political affiliation, etc. are to be avoided. Prohibition of discrimination due to political opinion is also guaranteed by article 19 (freedom of conscience), article 21 (freedom of speech, press, assembly and association), and article 8 (freedom of establishment of political parties) of the Constitution.

22. In addition to the above-mentioned article 11, other specific clauses in the Constitution provide for the realization of the principle of equality. Article 32, paragraph 4, of the Constitution prohibits discrimination against women in the workforce, stating that "working women shall not be subjected to unfair discrimination in terms of employment, wages and working conditions". Article 36, paragraph 1, provides that "marriage and family life shall be entered into and sustained on the basis of gender equality ...". In addition, article 41, paragraph 1, and article 67, paragraph 1, set forth equal rights in regard to ballots and elections, and article 31, paragraph 1, states that "all citizens shall have an equal right to receive an education corresponding to their abilities". The concept of ability in article 31, paragraph 1, is understood to mean the capabilities attached exclusively to a person and not to other removable conditions such as wealth or family background. Therefore, university admission based on open competitive examinations is allowed, whereas the use of other criteria such as wealth or family background is not.

23. In principle, basic human rights guaranteed in the Constitution apply equally to aliens. With the exceptions of voting rights and electoral eligibility, which clearly proceed on the assumption that a person is a national of the Republic of Korea, the Covenant rights of foreign nationals residing or sojourning temporarily within the territory and subject to the jurisdiction of the Republic of Korea, are treated and protected equally as nationals of the Republic of Korea.

24. Equal rights guaranteed in the Constitution are protected in the political, economic, social and cultural spheres, specifically through the Labour Standards Act, the Basic Vocational Training Act, the Civil Code, the Handicapped Welfare Act, etc. As already mentioned in the previous report, various remedies are available in cases involving infringement of the above rights.

Enactment of the Basic Employment Policy Act and guarantee of equal rights

25. On 27 December 1993, the Republic of Korea enacted the Basic Employment Policy Act, aimed at allowing every citizen to make full use of his or her talent and ability without fear of discrimination. Article 19 of the above Act states that "the employer shall not discriminate on the basis of gender, belief, social status, region of origin, or educational affiliation, etc., in recruitment and employment". Furthermore, arrangements have been made to address employment inequality through specific provisions for women, senior citizens and the handicapped. With regard to employment of women, article 17 provides that "the State shall endeavour to increase employment opportunities for women by expanding welfare facilities and enhancing and developing vocational ability, which ensure equal opportunity and treatment in employment

and facilitate occupational adjustment to the work". As for employment of senior citizens and the handicapped, article 16 states that "the State shall take the following necessary measures to promote employment of senior citizens, the handicapped and other persons having difficulties in finding jobs, particularly under common conditions of the labour market: developing suitable occupational categories for their employment, expanding opportunities for development of professional skills and providing information on employment".

26. Meanwhile, the Government enacted the Senior Citizens Employment Promotion Act on 31 December 1991 in order to enhance employment opportunities for the elderly and has been involved in providing information to senior citizens on job opportunities, vocational education, and employment counselling.

27. Moreover, to promote employment of the handicapped, the Handicapped Employment Promotion Act was made law on 31 January 1990. This Act prohibits all kinds of workplace discrimination involving the handicapped by providing that "the employer shall not discriminate against workers in personnel decisions such as hiring, promotion, transfers, educational training on the grounds that the worker is handicapped" (art. 4, para. 2). To guarantee equality through employment for the handicapped, it is provided that a minimum of 2 out of every 100 openings for open-competition employment in national and local governments be filled by the handicapped (art. 34); and businesses with more than 300 employees are required to employ more than 2 handicapped workers for every 100 members of their full-time workforce (art. 35).

Promotion of education of the handicapped through full revision of the Special Education Promotion Act

28. In January 1994, the Special Education Promotion Act was fully revised to increase the number of adequate possibilities in special education, which is tailored to individual abilities and the degree of disability. The Act also seeks qualitative enhancement of special education through the introduction of advanced methods.

29. This Act charges national and local governments with the responsibilities of developing special education, namely through the creation of a master plan, the training of special education instructors, and the establishment and management of special education institutions (art. 3, para. 1). A Central Special Education Inspection Committee and Regional Special Education Inspection Committees have also been set up to review major special education-related issues (art. 4, para. 1).

30. In addition, elementary and junior high school education are compulsory and free of charge for those eligible for special education. Kindergarten and senior high school education are to be provided free of charge with educational expenses to be borne or subsidized by national and local governments (art. 5).

Legal aid for the underprivileged

31. The Government is carrying out legal aid programmes in order to protect the rights of citizens who are unable to pursue legal means for personal damages due to unfamiliarity with the law or lack of financial resources necessary to cover the cost of legal proceedings. These services include free legal consultations, assistance for litigation costs and free procuration. The Korea Legal Aid Corporation (hereinafter referred to as KLAC), established on 1 September 1987, is operating with financial assistance from the national budget. KLAC, working from its Seoul headquarters and 50 representative and branch offices nationwide, provides legal aid for civil action to farmers, fishermen, and workers with an average monthly income below 1 million won (approximately US$ 1,200).

32. Legal aid services for civil action have shown the following results: legal consultation was given to 342,049 persons in 1993; 344,363 in 1994; and 365,142 in 1995. Litigation assistance was provided to 34,625 persons in 1993; 37,729 in 1994; and 47,658 in 1995. From 1 June 1996 onward, legal aid, which had been limited to civil offences, has been extended to criminal offence cases for farmers, fishermen, workers in financial need, small business owners, etc. given that certain conditions are met.

The Constitutional Court's guarantee of equal rights

33. Through the following important decisions, the Constitutional Court has ruled laws and administrative actions unconstitutional and in violation of the principle of equality:

(a) Provision relating to rallies of political parties in the National Assembly Member Election Act (Decision 92 HEONMA 37 of 12 March 1992). Article 55-3 of the National Assembly Member Election Act, which provides that a political party can hold speech rallies as a means of election campaigning for its candidates, is unconstitutional on the grounds that it gives rise to discrimination against independent candidates, thus violating the principle of equality;

(b) Provision on candidacy limitation in the Election for Public Office and Election Malpractice Prevention Act (Decision 95 HEONMA 172 of 12 June 1995). Article 53, paragraph 1, subparagraph 4, of the Election for Public Office and Election Malpractice Prevention Act on candidacy limitation, prescribes that the general staff, including directors, or executive staff of Government-invested institutions leave office 90 days before election day. Namely, the Law does not distinguish high-level officers from mid-level staff who are not in a position to exercise influence over decisions of these institutions. The Court ruled this an infringement on the right to public office, and therefore a violation of the constitutional principle of equality and proportionality;

(c) Provision on billiard room "off-limits" signs in the Enforcement Regulations for the Establishment and Use of Sports Facilities Act (Decision 92 HEONMA 80 of 13 May 1993). The Establishment and Use of Sports Facilities Act and its Enforcement Decree, which require only billiard rooms to post signs reading "off-limits to persons under 18", inflict unreasonable

limitations on the scope of business of billiard rooms as compared to other sports facilities. This kind of arbitrary discrimination encroaches upon the right to equal protection. Hence, it was declared unconstitutional;

(d) Disposition of the public prosecutor not to institute a public action (Decision 90 HEONMA 183 of 16 September 1991). A public prosecutor may not drop a case without investigating important matters that would normally be investigated, because such an approach infringes on the basic rights guaranteed to the complainant, that is, the right of equality and the right to make a statement during proceedings. Therefore, this privilege should be revoked as an improper exercise of prosecutorial powers.

Article 3

Enactment of the Basic Womens Development Act

34. On 30 December 1995, the Republic of Korea enacted the Basic Women's Development Act. The aim of the Act is to realize the constitutional ideals on gender equality through the enhancement of women's status in all spheres of life (i.e. political, economic, social and cultural) and to secure a firm foundation for relevant policies.

35. The above Act was legislated in the interest of society and out of citizen awareness, which was renewed with the Fourth World Conference on Women held in Beijing in September 1995. This law places responsibility on national and local governments, inter alia, for the extended participation of women in the policy-making process and politics (art. 15); expansion of access to public office (art. 16); employment equality (art. 17); intensified protection for maternity (art. 18); intensified initiatives for gender equality in education, in homes, schools and society (arts. 19-21); increased welfare for women (art. 22); expansion of infant nursery facilities (art. 23); establishment of equal status in intra-family relations (art. 24); prevention of sexual violence and domestic violence (art. 25); appreciation of domestic labour value (art. 26); increased international cooperation among women's groups (art. 27); and reduction of sexual discrimination in the mass media (art. 28). In addition, this legislation provides for the formulation of a five-year basic plan for the systematic pursuit of a policy on women; the inauguration of the Gender Discrimination Improvement Committee to eliminate gender discrimination and to promote gender equality; and the establishment of a Women's Development Fund to support women-related activities and facilities.

National plan for the promotion of women's status

36. In order to incorporate the policy on women into the national development plan, the Government established a separate section on women's issues in its seventh Five-Year Plan on Economic and Social Development (1992-1996). Concrete policy objectives are also being suggested for the following sectors: education, employment, cultural and social activity, welfare and international cooperation.

37. The Five-Year New Economic Plan also includes women's status as one of the major economic issues. The Basic Plan on Working Women's Welfare (1994-1997), set up as a follow-up to the Five-Year New Economic Plan,

promotes improvement in the status and welfare of women workers through comprehensive governmental efforts in the fields of employment, protection of maternity benefits and increased opportunities for finding jobs.

38. In addition, the following 10 priorities for the increased social participation of women were selected in October 1995 and are being pursued based on the discussions at the Beijing Conference:

(a) Extensive increase in the number of nursery facilities through private sector participation;

(b) Introduction of after-school tutoring for children (elementary schools nationwide);

(c) Comprehensive provision of meal services at school;

(d) Setting of target percentages for participation of women in public office;

(e) Introduction of an incentive scheme for public enterprises to employ women;

(f) Establishment of a society-wide, burden-sharing system to defray the cost of maternity care, including:

(i) Assumption by the public sector of a share in wage compensation during maternity leave through social insurance, etc;

(ii) Expansion in the scope of workplaces granting subsidies for maternity leave;

(g) Expansion and improvement of the training system for female workers, including:

(i) Improved vocational and technical education at the junior and senior high school levels;

(ii) Improved vocational education for women awaiting re-employment;

(h) Creation of an information network for women, including:

(i) Establishment of an information centre for women;

(ii) Establishment of an information-communication system among agencies related to women's issues;

(i) Enactment of the Basic Women's Development Act;

(j) Amelioration of gender-discriminative attitudes through mass media.

Reinforcement of government agencies in charge of policy on women

39. In 1991, the Government greatly reinforced the functions of the Office of the Minister of State in charge of gender policy. To ensure the overall coordination for policy on women, divisions for concerted action have been instituted in 38 departments of the government agencies. In the beginning of each year, the annual accomplishments and plans concerning policy on women are to be submitted to the Minister of State, and the drafting of laws or policies with significant influence on the status of women requires prior consultation with the Minister of State.

40. As a means to better understand the general public opinion regarding gender policy and to ensure reflection thereof in policy-making, a feedback mechanism, the "Voice of Equality", operates as a receiver of suggestions. Furthermore, control over the Korea Women's Development Institute was transferred from the Ministry of Health and Welfare to the Office of the Minister of State, thereby reinforcing the link between research and gender policy formulation and implementation. In addition, a permanent Special Committee on Women has been established in the National Assembly to deal with legal questions concerning the promotion of women's interests and welfare.

Support for employment of women

41. To support the employment of women and stabilize job-related activities of married women, the Infant Nursery Act was enacted in January 1991. The expansion of nursery facilities, after-school tutoring for children, comprehensive provision of meal services at school and other supportive operations are being systematically administered.

42. To expand nursery operations, child-care facility requirements have been extended to establishments with over 300 women workers. The former limit was 500 women workers. During the three years from 1995 to 1997, 1,300 billion won (approx. US$ 1.6 million) will have been invested to create 7,590 child-care facilities, thus raising the nursery accommodation rate to 95 per cent for children of low-income families in need of government support. Business owners providing nursery facilities in the workplace are granted a partial subsidy on the expenses for construction, equipment and operation of these facilities. Attempts are also being made to use religious institutions as nursery facilities.

43. The Employment Insurance Act of December 1993 provides employment insurance as a financial incentive for enterprises that offer child-leave or arrange nursery facilities at the workplace. At present, the child-leave subsidy programme is being applied to establishments with no less than 70 employees and will be extended to establishments with no less than 50 employees by 1998.

44. The Government fully supports devising and applying appropriate work styles for married women. Labour-related laws are being applied equally to domestic and part-time workers so as to ensure equitable working conditions. The "Guidelines Relating to Guarantee of Conditions for Part-time Workers" were formulated and have been applied since January 1992, as part of the

Government's comprehensive measures regarding part-time workers. A special window for increased female employment opportunity for professional jobs is being operated in six local Labour Agencies nationwide.

45. Article 4, paragraph 3, of the Basic Vocational Training Act provides that "vocational training for women shall be viewed as a priority". The Government places great emphasis on vocational training for women. Since 1995, 28,538 women have been educated in vocational training institutes. Furthermore, a vocational training institute for women established in October 1991 (Anseong Women's Vocational Training Institute) was converted into a two-year technical college (Anseong Women's Technical College) in July 1994. As of May 1996, 450 women had been trained there in various fields such as fashion design, data processing, and electronic technology.

46. As a result of these policy efforts for equal employment rights and for increased social participation of women, the rate of women's participation in the economic sector reached 48.3 per cent in 1995, a sharp rise from 39.3 per cent in 1970 and 42.8 per cent in 1980.

Revision of the Employment Equality Act

47. The Employment Equality Act, enacted in November 1987, was twice revised, once in 1989 and again in 1995. The Act substantially guarantees greater equal employment. The following is an outline of 1995's revisions:

(a) In recruiting or employing female workers, no employer shall present or demand any physical conditions not essential to carrying out their duties (art. 6);

(b) In determining criteria for work of the same value, the employer shall consider the opinion of employee representatives, including women employees (art. 6-2);

(c) The employer shall not discriminate against female employees in regard to financial remuneration, including family allowances or housing finances for employees (art. 6-3);

(d) No employer shall discriminate against female employees in training, assignment or promotion compared with any male worker solely based on considerations related to marriage, pregnancy or childbirth (art. 7);

(e) The spouse of a female worker may also apply for temporary leave of absence for post-natal care (art. 11);

(f) The Employment Disputes Mediation Committee was converted to the Employment Equality Committee to reinforce its functions, i.e. not only for coping with disputes on gender discrimination, but also for holding consultations on the employment of women and employment equality (art. 16).

48. Since the Employment Equality Act entered into effect, sexual discrimination systems and practices regarding employment and working conditions have continuously improved. But deep-rooted gender discriminatory attitudes and social customs do not change easily. In order to eliminate

excessively conservative attitudes and customs and to promote the spirit of employment equality, the Government has proclaimed October of each year as Employment Equality Month. The goal is to raise peoples consciousness of employment equality through advocacy, seminars and campaigns. Meetings with owners of industrial corporations nationwide have also been held to heighten employer awareness of discriminatory attitudes and policy.

49. The Employment Equality Act, as revised in 1995, has additionally prescribed penalties for acts that deny equal opportunity in recruiting and employing workers. Several companies, which published recruiting advertisements that limited applications to men only, have been sentenced by the Seoul District Court to a fine of 1 million won (approximately US$ 1,200) due to violations of the above provision.

Measures for increased participation of women in public office

50. The present Government, inaugurated in February 1993, is making efforts to increase women's participation in the policy-making process. A Public Official Recruitment Quota System for women has been introduced to raise the ratio of successful women candidates; in open recruitment processes for public officials, women are recruited at increasing rates, moving toward the pre-determined goal of 20 per cent by the year 2000.

51. In addition, the "Guideline on Women Public Official Personnel Management" has been formulated and implemented in order to eliminate discrimination against female public officials in training, assignments, promotion or any other personnel matters. Separate training programmes and overseas study programmes are also provided in order to develop the capabilities of women officials.

Protection of women from violence

52. For thorough prevention of violent sexual crimes and protection of female victims, the "Act Relating to Punishment of Sexual Violence Crimes and Protection of Victims" was instituted on 5 January 1994.

53. According to the Criminal Code, the crime of rape is prosecuted only upon submission of a complaint; but the above-mentioned Special Act provides for prosecution without complaint of the rape victim if the assailant was carrying a weapon, acting jointly with one or more assailants, or attempting to rape or perpetrate indecent acts upon the handicapped. In addition, obscene acts committed using modern means of communication, such as the telephone and computer, are punishable under a new penalty clause. The Special Act also prescribes various measures to protect women victims during trial procedures.

54. Furthermore, counselling centres and protection facilities for victims of sexual and domestic violence have been established to allow women to physically recover, to regain mental stability and to restore a sense of security to their lives.

55. Women also benefit from certain protections with regard to means of resistance against acts of sexual violence. The Seoul High Court rendered a

decision that "the act of a woman, who had her clothes taken off and was in danger of being raped at night, and then stabbed her assailant to death by putting a knife in his right shoulder, may constitute excessive self-defence, but if committed by fear and shock under extraordinary circumstances, such an act should not be punished under article 21, paragraph 2, of the Criminal Code" (Seoul High Court Decision 95 No. 2673 of 14 September 1995). Another decision demonstrates the inclination towards protecting women victims from sexual violence. By widening the scope of consideration of circumstances, the court granted leniency to a woman who killed the man who had sexually abused her. Leniency was granted because the woman had mentally suffered from habitual sexual violence.

56. With the activity of the Special Rapporteur on violence against women appointed by the United Nations Commission on Human Rights, international public opinion has reached a new level of awareness regarding the question of military sexual slavery. The Government is urging the Japanese Government to unveil the historical truth regarding military sexual slavery and find solutions acceptable to the victims and the relevant NGOs.

Protection of women's economic rights

57. Economic valuation of household work is of great importance in many aspects, but policy has not properly reflected the potential income value of household work. Domestic labour by housewives has been undervalued. For example, they have received less compensation for accidental injuries in comparison with salaried workers. Yet, the situation has been improved through revision of the relevant laws.

58. The family law, as revised in 1990, has established a legal base for recognizing the value of household work. It confirms joint responsibility of married couples for living expenses and in divorce proceedings, and validates wives' claims to a share of the family assets based on the economic contribution of their household work. The inheritance law, revised in December 1994, recognizes housewives' contributions of household work as a factor in the growth of assets. This is done by increasing the deductions from the gift tax and inheritance tax for spouses, and the scope of exemptions for bequests or gifts from spouses. The value of household work is being applied in tax laws and insurance-related regulations. For example, insurance benefits for housewives were upgraded in 1995.

Welfare policy for women in need of protection

59. The Mother-Child Welfare Act was legislated in April 1989 to enhance the welfare of single-mother households, most of which are underprivileged. At the end of 1994, 85.6 per cent of a total of 51,925 single-mother households received the following protection under the above Act: subsidies for educating and raising children, accommodations, support for moving into public permanent rental houses and loans for operating businesses. Homeless mother-child families are given priority for permanent, public rental homes. In case a single-mother household moves into a mother-child welfare facility, accommodations are guaranteed for three years, and a resettlement allowance is provided at the time of moving out.

60. To guide women involved in prostitution, the Prevention of Prostitution Act, revised in January 1995, stipulates the establishment of welfare institutions such as guidance and self-reliance facilities, national and local self-support facilities, and financial support for expenses in operating these facilities (arts. 12 and 19).

61. To assist women in need of protection, particularly those involved in prostitution or who have run away from home, the Government is operating 128 Women's Welfare Consultation Centres nationwide. At these centres, 408 women welfare counsellors have been hired to counsel women in need of protection or advice on personal and family affairs. Based on the results of such consultations, vocational training and education is provided in 21 guidance institutions for sound social rehabilitation of women requiring protection.

Women's political rights

62. Article 24 of the Constitution states that "all citizens shall have the right to vote under the conditions as prescribed by law", and article 25 of the Constitution stipulates that "all citizens shall have the right to hold public office under the conditions as prescribed by law". A woman's right to vote and to hold office are not limited, and relevant election laws do not restrict the above rights.

63. The percentage of women among the National Assembly members in the fifteenth term inaugurated on 30 May 1996, is higher than the 2 per cent of the fourteenth term, but relatively low in comparison with the world average of 10 per cent. As for the June 1995 election of local councils, 71 women (i.e. 1.6 per cent of the total) were elected in the primary local councils at the Shi (city), Kun (county) and Ku (district) levels. In the greater local councils at the Special City, metropolitan city and provincial levels, 55 members were women, representing 5.7 per cent of the total. These figures confirm the difficulties still facing women wishing to participate politically. However, a system of proportional representation to ensure women's representation in local councils was introduced in the revised Election for Public Office and Election Malpractice Prevention Act of April 1995. Since its enactment, women represent 42 of the 97 council members (43.3 per cent) from the greater administrative areas of the Special City, metropolitan cities and provinces where election by proportional representation is used. Furthermore, 34.4 per cent of women candidates were successful in council elections in the primary administrative areas of Shi, Kun and Ku. The participation rate of women is expected to increase in the future.

64. Reasons for low political participation rates of women include, among others, a patriarchal tradition disfavouring women's participation in society, a lack of social recognition of the capability of women politicians, lack of involvement among women themselves, and insufficient support from the political parties. In addition, the constituency system has been pointed out as another disadvantage to women. Therefore, the Basic Women's Development Act of December 1995 provides that "national and local governments shall exert

themselves through various methods to support increased women's participation in politics". The Government is considering various measures in response to the above Act.

Endeavours for revision of the family law

65. The family law containing gender-discriminatory elements was completely revised in January 1990 and put into effect in January 1991. In response to complaints from some women's rights supporters that gender discrimination still remains, the Government assembled academic and professional personnel in the form of the Special Committee for Revision of the Civil Code. The Committee met 34 times from June 1993 to May 1996 to review the family law.

66. The main purpose of these present efforts is to revise articles, with a view to abolishing the mandatory waiting period for remarriage (article 811 of the Civil Code), converting the prohibition of marriage between persons sharing the same surname and family origin (article 809 of the Civil Code) into a prohibition of marriage among immediate relatives, and abolishing the head of family system.

Article 4

67. It was already stated in the initial report that the Constitution confers on the President the right to issue emergency orders, to take emergency financial and economic actions and to proclaim martial law (art. 76, paras. 1 and 2; art. 77, para. 1). Presidential emergency orders and emergency financial and economic actions lose effect if approval is not obtained from the National Assembly. As for martial law, the President must comply if the National Assembly, by a concurrent vote of a majority of all the members, decides that it should be lifted (art. 76, para. 4 and art. 77, para. 5).

68. Article 37, paragraph 2, of the Constitution states that even when the freedom and the rights of citizens are restricted by law for reasons of national security, maintenance of law and order or public welfare, no essential aspect thereof shall be violated. This provision applies to the case of fundamental rights in the face of emergency orders and proclaimed martial law. Therefore, freedom of belief, choice of religion, decisions of conscience, silence, research and creative work, etc. shall not be infringed upon for any reason, and any restriction of fundamental rights to a degree that would render such rights meaningless shall not be tolerated.

69. In addition, the Constitution permits only the necessary minimum actions in implementing financial and economic orders. As for martial law, special measures may be taken only with respect to the need for warrants; freedom of speech, the press, assembly and association; or the powers of the Executive and the Judiciary. Infringement of the fundamental rights elaborated in article 4, paragraph 2, of the Covenant shall not be tolerated. As an additional note, martial law has never been proclaimed since the current Constitution entered into effect in 1987.

70. In the Republic of Korea, a presidential emergency financial and economic order was issued on 12 August 1993. The Financial and Economic

Emergency Order Relating to the Use of Real Names in Financial Transactions and Guarantee of Secrecy was approved by the National Assembly on 19 August 1993. The emergency order seeks the earliest possible stabilization of the financial, real-name system, in particular, by preventing the circulation of illegal funds using alias, with the objective of eliminating collusion between politics and business, unearned income, speculation, etc. as a way of achieving justice in distribution. It therefore required prompt enforcement.

Article 5

71. The Republic of Korea in no way construes provisions of the Covenant in a manner that would violate the rights and freedoms recognized by the Covenant. Nor does it restrict rights and freedoms beyond the limits prescribed by the Covenant. This is guaranteed by the determination of the Republic of Korea to continue to develop as a free democracy. Human rights protection, a system of checks and balances of powers, and independence of the Judiciary are crucial aspects of this development.

72. In addition, as already pointed out in the initial report, fundamental human rights not provided under the Covenant but recognized by the Constitution and Law of the Republic of Korea, shall not be infringed or restricted for lack of reference thereto in the Covenant.

Article 6

Paragraph 1 - Right to life

73. It was observed in the initial report that the right to life is protected by article 10 of the Constitution, which guarantees the human dignity of every citizen. The Supreme Court has viewed the right to life as a paramount, inalienable right. To protect individuals from violent crime and to prohibit arbitrary deprivation of life by individuals, the Criminal Code prescribes specific penalties for committing homicide in chapter XXIV (arts. 250-256).

74. Protection of unborn children. So as to protect both the lives of the unborn and those of children after birth, chapter XXVII of the Criminal Code prescribes a penalty for the crime of abortion. However, article 14 of the Mother-Child Health Act provides for exceptions on abortion. These exceptions are restricted to the following causes: pregnancy leading to severe injury or danger to the mother's health; dysgenic or genetic mental handicap; physical disease of the pregnant woman; pregnancy induced by rape or other crimes; pregnancy caused by incest. During revision of the Criminal Code in 1995, views were expressed that its provisions establishing abortion as a crime should be abolished. But due to the absolute predominance of the national sentiment that the lives of unborn children must be protected under the right to life, the crime of abortion was retained in the revised Criminal Code.

75. Protection of pregnant women and infants. In order to protect the lives of pregnant women, to promote the delivery of healthy infants and to ensure proper infant care, the Mother-Child Health Act was enacted in May 1986. Mother-Child Health services have been established and are operated by the

national and local governments. Regular medical examinations and vaccinations have been provided to pregnant women and infants, resulting in declines in the infant mortality rate.

76. Restrictions on the use of firearms by police officers. The use of firearms is severely restricted in order to prevent the potential deprivation of lives by arbitrary use of weapons by police officers. Police officers may not harm persons by use of firearms except in the following cases enumerated in article 11 of the Police Officer Duty Performance Act:

(a) A person believed, with sufficient reason, to have committed crimes punishable by death or by imprisonment from three years to life, is resisting arrest, escaping or being helped to escape by a third party, and there is no alternative means available but the use of firearms to intercept or arrest;

(b) A person is resisting, escaping or being helped to escape by a third party, thereby impeding execution of a warrant of detention or search and seizure, and there is no alternative means available but the use of firearms to intercept or to arrest;

(c) A criminal or insurrectionaries carrying dangerous items such as weapons, refuses at least three times to comply with police orders to abandon or surrender and there is no alternative means available but the use of firearms to intercept or to arrest;

(d) An armed agent is refusing to comply with orders from a police officer to surrender during counter-espionage operations;

(e) In cases of self-defence or emergency evacuation prescribed by the Criminal Code.

Paragraph 2 - The death penalty system and crimes subject to the death penalty

77. Several provisions of the Criminal Code and other special acts prescribe capital punishment as the most serious penalty. But crimes subject to the death penalty are restricted to flagrant crimes: crimes endangering the existence of the State, such as insurrection (article 87 of the Criminal Code), inducement of foreign aggression (article 92 of the Criminal Code), espionage (article 98 of the Criminal Code); crimes depriving other persons of their lives, such as homicide (article 250, paragraph 1, of the Criminal Code), killing of lineal ascendants (article 250, paragraph 2, of the Criminal Code), robbery with murder (article 338 of the Criminal Code); atrocious crimes destroying homes and families, such as special robbery with rape (article 5 of the Act on Special Measure Concerning Punishment of Crimes of Sexual Violence and Protection of Victims). The death penalty is executed by hanging (article 66 of the Criminal Code).

78. Robbery and simple robbery with rape are not subject to the death penalty. The application of the death penalty is restricted to cases in which robbery is committed in combination with other crimes with destructive effects upon the lives and homes of individuals, for example, robbery with murder or

special robbery (robbery committed by trespassing upon a construction at night, accompanied by more than one person, or by being armed with a deadly weapon) and rape.

79. In the revision process of the Criminal Code and special penal acts, a number of objections have been raised regarding the continued application of the death penalty. Considering the current circumstances, however, in which criminal syndicates are being organized to kidnap and murder innocent citizens and to regularly intrude into peaceful homes to rob, rape or commit other flagrant crimes, abolition of the death penalty seems premature. But in recognition of the cause and spirit of the Covenant and Constitution of the Republic of Korea regarding human dignity, a consensus has been reached to narrow the scope of crimes subject to capital punishment.

80. From this viewpoint, the Act Concerning Aggravated Punishment for Specified Crimes and the Act Concerning Aggravated Punishment for Specified Economic Crimes were revised on 31 December 1990 to remove the death penalty from 15 clauses including crimes of bribery, evasion of customs duties, etc. The revised Criminal Code, promulgated on 29 December 1995, has seen the deletion of the death penalty from five clauses, inter alia, inundation of residential structures leading to death or injury, obstruction of public traffic causing death or injury, obstruction of the use of public drinking water causing death or injury, and death resulting from robbery.

81. The death penalty is the most severe punishment within an allowable range prescribed by law. Penal servitude for life and for a shorter definite term are stipulated together with the death penalty, so that the death penalty can be rendered only in cases of flagrant crimes, while life imprisonment or penal servitude for a shorter definite term is the more common sentence on most occasions.

82. The Supreme Court has expressed the opinion on the death penalty that "from a humanitarian or religious viewpoint, institution of the death penalty leading to deprivation of invaluable lives should be avoided. On the other hand, to protect other invaluable lives assailed by crimes and to maintain public peace and order, the continued existence of the death penalty for the penal policy of the State cannot but be justly admitted. Therefore, article 338 of the Criminal Code (robbery and murder) stipulating death as a legal penalty is not considered to be unconstitutional" (Decision 87 DO 1458 of 8 September 1987). The Supreme Court thereby assented to the retention of the death penalty and decisions to the same effect have been made in that context thereafter.

83. However, the Supreme Court has stated that "the death penalty is the drastic punishment [of] causing permanent deprivation of a human life, and is the heaviest penalty applied only when continuation of that life cannot be tolerated; various factors should first be considered in ruling for the death penalty, namely, the motive, the form, the nature of the crime, the means and the degree of brutality of the criminal act, the gravity of its result, the number of victims, emotions/sentiments toward the injury, the criminal's age, prior convictions, the circumstances following commitment of the crime, the environment, education and the upbringing of the criminal should be taken into consideration". After reflecting on all these factors the death penalty can

be pronounced (Decision 92 DO 1086 of 14 August 1992). As for the Constitutional Court, two constitutional petitions have been filed arguing that prescription of the death penalty in article 338 of the Criminal Code is unconstitutional. Both were rejected for violation of the filing procedure for constitutional petitions (Decision 89 HEONMA 36 of 25 November 1993, 90 HEONBA 13 of 29 December 1994).

84. As the information below indicates, the number of death sentences and executions increased in 1995. This was due to an increase in the prosecution of flagrant, organized crimes, e.g. the crime syndicate "Jijonpa" run by six individuals including Kim Kih-Hwan, responsible for series of immoral crimes (i.e. kidnapping, murder, mutilation and incineration of victims).

Persons sentenced to death and executed (1991-1996)

Year	1991	1992	1993	1994	1995	1996 (Jan.-June)
Final sentences	29	16	10	5	19	2
Executions	9	9	0	15	19	0

85. In 1991, seven death sentence appeals were reviewed, and none thereafter. All appeals were rejected.

86. As stated in the initial report, the death penalty is pronounced following a fair trial by an independent court, under due process of law, that is to say, the innocence of the accused is presumed, the right to counsel is fully protected and the rights of appeal and to a retrial are strictly observed.

Paragraph 4 - Right to request amnesty and commutation of sentence

87. It has already been observed in the initial report that a person sentenced to capital punishment may petition for amnesty or commutation under article 26 of the Constitution (right of petition), or articles 4, 6 and 7 of the Petition Act. The President may grant amnesty or commutation under article 79 of the Constitution (amnesty, commutation and restoration of rights) or articles 2, 3, 5 and 8 of the Amnesty Act.

88. Of all those sentenced to the death penalty, one was granted amnesty and the sentences of 35 others were commuted between 1951 and 1990. Cases of amnesty or commutation have not occurred since 1991, owing to the fact that criminals sentenced to death in that period all committed the most flagrant crimes. The sentencing to the death penalty of those individuals received full support from the people of the Republic of Korea.

Paragraph 5 - Prohibition on execution of minors and pregnant women

89. As mentioned in the initial report, the Juvenile Act was revised to increase the minimum age for the death sentence from 16 to 18, and article 469 of the Penal Procedure Code prohibits execution of a pregnant woman.

Article 7

Prohibition of torture and other inhumane treatment

90. Torture and inhumane treatment are categorically prohibited in the present Constitution, Criminal Code, Penal Procedure Code and other relevant laws, as discussed in the initial report.

91. The principle of prohibition of torture and inhumane treatment is provided in article 12, paragraph 2, of the Constitution: "no citizen shall be tortured or be compelled to testify against him or herself in a criminal case." Confirmation of this principle can be found in articles 123, 124, and 125 of the Criminal Code, article 4-2 of the Act Concerning Aggravated Punishment for Specified Crimes and article 198-2 of the Penal Procedure Code.

92. The revised Penal Procedure Code of 29 December 1995 obligates the prosecutor to inspect, more than once every month, not only the detention facilities of police stations, but also confinement areas of every investigating bureau. If the prosecutor decides that any act of torture or inhumane treatment has taken place, he or she can order the instant release of arrested or detained suspects, or transfer the case to the prosecutor's office.

93. Furthermore, article 12, paragraph 7, of the Constitution provides that "when a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged detention, deceit, etc., ... such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession". Article 309 of the Penal Procedure Code stipulates, in addition to the disqualifying factors mentioned above, that a confession likely to have been extracted involuntarily may not be admitted as evidence. Therefore, it is guaranteed in respect of laws of evidence that torture and other acts of intimidation will not be inflicted upon the suspect.

94. Supreme Court decisions denying the proof value of confessions through torture, etc. have prohibited the use of torture. The Court's decision of 28 September 1993 (Decision 93 DO 1843) reflects this principle as it recounts as follows: "being under detention without a warrant for one and a half days, questioned by an investigator who was junior by 15 years, kneeling with knees bent and without sleep, would have caused deep humiliation and indignity and might have led to a loss of will to defend oneself. Accordingly, from the general circumstances of the confession, there exists sufficient reason to believe that the accused's confession was not voluntary and therefore can't be admissible as a valid evidence of conviction".

95. To prevent torture or inhumane treatment in the performance of official duties, attention has been paid not only to legal or institutional systems,

but also to the attitudes of public officials engaged in the judicial procedure. Therefore, education for public officials on the prevention of torture and other abuses has been emphasized. Under the direction of the Supreme Public Prosecutor's Office, each public prosecutor's office and branch office has contributed to educating 7,301 judicial police officials and the personnel of the Public Prosecutor's Office (i.e. 12,076 persons) by offering them special human rights training during the year 1995.

96. In particular, investigating agencies, including the police, are increasing their efforts to prevent torture or inhumane treatment. Also, as stated in the initial report, all necessary efforts have been made to prevent torture and other infringements of human rights by the appointment of a public prosecutor in charge of human rights affairs. In addition, the chief of investigation of each police station is appointed as a human rights protection officer. He or she is responsible for educating investigative officers and inspecting detention cells in promotion of the human rights protection policy. This practice has been ongoing since January 1992. The Human Rights Infringement Report Centre was established in the Superintendent's Office of the National Police Agency in May 1993. The Centre receives complaints and deals with human rights infringements such as violent or cruel acts during investigation.

Remedy for persons who have suffered from torture or inhumane treatment

97. Any person who has suffered from torture or inhumane treatment while being detained by authorities may file a complaint with the judicial authorities. In case the relevant illegal act is related to the scope of duty of a public official, the complainant may demand compensation from the State. Furthermore, the initial report already noted that if the public prosecutor takes a disposition of non-indictment, in disregard of cruel treatment during an investigation, the plaintiff may apply to the relevant court to rule on the prosecutor's decision and to reopen the case.

98. Some investigating agents were punished due to violent or cruel treatment against criminal suspects during the performance of duty. The number of cases reported in recent years is two for 1991, one for 1992, seven for 1993, and four for 1994.

Accession to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and submission of the initial report

99. As a means of proclaiming its goal of eradicating torture and inhumane treatment and participating in the international effort to ensure human rights, the Republic of Korea acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention took effect on 8 February 1995, following deposit of the instrument of accession with the Secretary-General of the United Nations on 9 January 1995. The initial report under the above Convention was submitted on 9 February 1996 and it described various laws and institutions of the Republic of Korea protecting persons from torture or inhumane treatment.

Prohibition of cruel punishments

100. Article 12, paragraph 1, of the Constitution provides that "no person shall be punished or placed under preventive restrictions or subject to involuntary labour except as provided by law and through lawful procedures". This kind of punishment is delineated in article 41 of the Criminal Code, and the Penal Administration Act prescribes strict and firm procedures for the execution of such punishment. Punishments not provided for by law are completely precluded herewith.

Article 8

101. The previous report affirmed that the prohibition of slavery, servitude, and forced or compulsory labour is guaranteed under article 10 of the Constitution, which provides for human worth, dignity and the right to pursue happiness. Furthermore, article 12, paragraph 1, of the Constitution states that no person may be subjected to involuntary labour except as provided for by law and through lawful procedures.

102. In accordance with the spirit of the above-mentioned clauses of the Constitution, article 324 of the Criminal Code prescribes punishments for persons obstructing another from the exercise of his or her fundamental rights and for those forcing another, through violence or intimidation, to do what is not his or her duty. Article 6 of the Labour Standards Act stipulates that "an employer shall not force an employee to work against his/her own free will through use of violence, threats, confinement or by any other means which unjustly restrict mental or physical freedom". Articles 50 to 63 of the Labour Standards Act prohibit forced, excessive labour of women and minors.

103. The Employment Security Act's article 46, which was revised in January 1994, provides a penalty for any person who fills a job placement or carries out recruitment or supply of labour by means of violence and detention. The revised Anti-Prostitution Act strongly prohibits the coerced servitude common in prostitution by reinforcing penal provisions on forced prostitution by means of violence, intimidation, etc.

104. The principles that prohibit compulsory labour are applied to the maximum extent to military service or to servitude not included in the term of forced or compulsory labour under article 8, paragraph 3, subparagraph (c), of the Covenant.

105. All citizens of the Republic of Korea are required to take up the duty of national defence due to the extraordinary situation of the Korean peninsula. But the Military Service Act, the Martial Court Act and other laws guarantee the human rights of individuals obligated to perform military service. In order to prevent excessive work from being introduced for prisoners with penal labour sentences, the Penal Administration Act and related Regulations prescribe a defined working environment, a description of the type of labour, and limits on working hours to allow for proper rest.

Article 9

Paragraph 1 - Liberty of person and prohibition of arbitrary arrest and detention

106. The legal system of the Republic of Korea, including its guarantees of the liberty and security of persons, was detailed in the initial report: paragraphs 1 and 3 of article 12 of the Constitution proclaim the principles of due process of law as they guarantee peoples liberty. These principles are most particularly embodied in the provisions of articles 70 (causes for detention), 73 (issuance of warrant), 75 (form of warrant of detention), 85 (procedure for execution of warrants of detention) and 201 (request for warrants of detention by the public prosecutor) of the Penal Procedure Code.

107. The Republic of Korea has made arrangements for even more thorough guarantees of liberty and security of person in the new Penal Procedure Code, as revised and promulgated on 29 December 1995 and to be carried into effect on 1 January 1997 (hereinafter referred to as "the revised Penal Procedure Code").

108. As for detention, the strict and firm principle of arrest by warrant is provided in the Penal Procedure Code. However, some concern was raised in regard to the voluntary appearance system, which permitted very brief custody of suspects at a certain place. There was a potential for infringement of human rights, however, due to the absence of a definite clause regulating voluntary appearance. Namely, investigating agencies maintained the practice of issuing detention warrants after the voluntary appearance and interrogation of the suspect at the police station. In an effort to eliminate potential infringement of human rights for voluntary appearance, the Police Officer Duty Performance Act, which provides for voluntary appearance, was revised on 8 March 1991. The revisions firmly restrict the requirements, procedures and time of arrests associated with voluntary appearance. Ceaseless indications of problems, however, have led to the establishment of the arrest warrant system in the revised Penal Procedure Code as a fundamental solution to the question of voluntary appearance.

109. Therefore, if there is a proper reason to believe that the suspect has committed the crime, and the suspect does not obey summons without justifiable reasons, the suspect may be arrested with an arrest warrant issued by the competent court judge upon request of the public prosecutor. For judicial police officers to obtain such a warrant, they must petition the public prosecutor to request issuance of an arrest warrant by a competent court judge. This system ensures that the possible arrest of a suspect pursuant to a voluntary appearance can be precluded and the principle of arrest by warrant can be clarified.

110. Detention of persons under the National Security Law is conducted as in any other criminal case - under the strict and firm requirement of a warrant. On one occasion, it was asserted that agents of the Agency for National Security Planning, acting as judicial police officers for crimes in violation of the National Security Law, infringed upon people's human rights in the investigation process. Consequently, a clause was formulated during the

revision of the Agency for the National Security Planning Act on 5 January 1994. The clause provides that "agents of the Agency for National Security Planning shall neither arrest nor confine individuals by abuse of authority or for neglect of the procedure prescribed by law". Imprisonment and hard labour not exceeding seven years were prescribed for violation of the Act, thereby ensuring protection against human rights abuses during the investigatory process.

Paragraph 2 - Notification of the reasons for arrest and related charges

111. Article 12, paragraph 5, of the Constitution and articles 72 and 209 of the Penal Procedure Code guarantee that persons being arrested or detained be notified of the reasons for the arrest or detention and the charges. Furthermore, article 12, paragraph 5, and article 87 of the Penal Procedure Code provide that the defence counsel or family of a suspect or accused who is arrested or detained, be notified without delay of the reason for, and the time and place of, the arrest or detention. Until recently, notification of the basis for the charges had been made under the Regulations of the Supreme Public Prosecutors Office. However, article 87 of the revised Penal Procedure Code stipulates procedures for notification of not only the reasons for detention but also the gist of the charges. This is in complete conformity with article 9, paragraph 2, of the Covenant.

Paragraph 3 - Speedy operation of criminal proceedings

112. As was indicated in the initial report, article 27, paragraph 3, of the Constitution ensures the right to a speedy trial; articles 202, 203 and 205 of the Penal Procedure Code establish maximum detention periods by investigating agencies; and article 92 of the Penal Procedure Code stipulates a speedy criminal trial procedure of the court.

113. In a case involving a violation of the National Security Law, the maximum detention period is 50 days, in accordance with the warrant issued by the judge. This is longer than that of general criminal cases (30 days), because cases involving violation of the National Security Law, such as the crime of espionage, require long-term and specialized investigation procedures and information collecting.

114. The Constitutional Court once decided that "as for crimes stipulated in articles 7 (praise and encouragement of anti-State groups) and 10 (non-notification) of the National Security Law, requirements for the constitution of the crimes are not particularly intricate, and collecting evidence for these crimes is not difficult due to the nature of the case; therefore allowing the above crimes a longer detention period than that of an ordinary criminal case is unnecessary and long-term detention, hence, is unconstitutional" (Decision 90 HEONBA 82 of 14 April 1992). At present, the Constitutional Court has been requested to adjudicate the unconstitutionality of other provisions of the National Security Law stipulating relatively longer detention periods (Decision 96 HEONGA 8, 9 and 10).

115. Restraint upon detention of prisoners on trial. The Constitution is not explicit in matters of pre-trial detention. However, article 199, paragraph 1, of the Penal Procedure Code restricts the use of coercive

measures (for example, arrest, search or detention) during an investigation to exceptional cases prescribed by law. The Code provides that "necessary examinations may be made in order to carry out investigations; however, coercive measures shall not be taken except when authorized by this Code". Furthermore, the revised Penal Procedure Code further clarifies the above principle by amending the provision of article 199, paragraph 1; i.e. "coercive measures shall not be taken except when authorized by this Code and only to the minimum extent necessary".

116. Efforts to reduce the time of confinement of the accused under trial have resulted in the reduced rate of arrests from all criminal cases, i.e. from 8.7 per cent in 1990 to 7.3 per cent in 1995. This trend of declining arrest rates is expected to continue.

117. With the aim of enlarging the scope of release on bail, not only after indictment but also before indictment, article 214-2, paragraph 4, of the revised Penal Procedure Code stipulates release on payment of bail which is sufficient to ensure the suspects presence in case a review of the legality of detention has been requested.

Recent data on operation of the bail system (in number of persons)

Year	Requests	Permitted	Not permitted	Bail ex officio
1991	41 624	25 406	16 218	91
1992	41 064	24 481	16 583	116
1993	45 911	26 032	19 897	199
1994	41 833	23 297	18 536	235
1995	45 381	26 001	19 380	323

Paragraph 4 - Review of the legality of the arrest or detention

118. Article 12, paragraph 6, of the Constitution declares that "any person who is arrested or detained, shall have the right to request the court to review the legality of the arrest or detention", while the right of the confined suspect to submit a petition to examine the legality of the confinement is stipulated in articles 214-2 and 214-3 of the present Penal Procedure Code. However, there was no explicit provision in the Penal Procedure Code on the right of the arrested to request review of the legality of the arrest, and it had been pointed out that the constitutional ideas have not been thoroughly reflected. Under the revised Penal Procedure Code, the arrested suspect may now apply for review of the legality of arrest.

Recent data on the operation of the review system of the legality of detention (in number of persons)

Year	Requests	Disposition		
		Release	Dismissal	Withdrawal
1991	11 984	6 249	5 049	686
1992	10 682	5 654	4 486	542
1993	12 027	6 043	5 418	566
1994	19 201	5 245	4 474	482
1995	11 032	5 513	5 022	497

Paragraph 5 - Penal compensation

119. The initial report mentioned that under article 28 of the Constitution and the Penal Compensation Act, an accused person who has been placed under detention without being indicted as prescribed by law or who is acquitted by a court, shall be entitled to claim proper compensation from the State. The upper limit for penal compensation was raised from 8,000 won (approx. US$ 10) per day to 15,000 won (approx. US$ 19) per day by the Enforcement Decree of the Penal Compensation Act of 24 February 1988. The 19 June 1991 revision of the Enforcement Decree did not fix the upper limit at an invariable sum, but in fact raised it by prescribing five times the sum of minimum per diem under the Minimum Wage Act of the year when the cause of the compensation claim was generated. This makes substantial compensation possible through linkage to fluctuations in consumer prices.

Recent data on penal compensation granted is as follows

Year	1991	1992	1993	1994	1995
Number of cases	123	147	207	238	280
Total sum (1 000 won)	307 748	355 678	760 594	941 586	1 305 808

Article 10

Paragraph 1 - Protection of human rights with regard to inmates through revision of the Penal Administration Act

120. It was stated in the initial report that all inmates are subject to humane treatment according to the principle of respect for human rights stipulated in article 10 of the Constitution. Treatment of inmates has been further improved by the revision of the Penal Administration Act.

121. In order to more positively achieve the ideals of correction, i.e. enlightenment and social rehabilitation for the inmates (unconvicted prisoners and convicts), and to promote the rights of inmates, the Penal Administration Act was revised on 5 January 1995. The revisions improved and updated several provisions inadequate for the present situation or potentially violative of human rights. They also introduced advanced correctional programmes desirable for social rehabilitation. Through the revision of the Penal Administration Act, legal provisions on penal administration of the Republic of Korea are now in further accord with the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations. Explanations of major revised features of the Penal Administration Act will be explained in the subsequent chapters.

122. Improvement of basic treatment of inmates. The hair-cutting arrangements for prisoners, which have been carried out since 1912, were abolished to respect the sense of honour of the prisoners and to facilitate the transition process into civilian life after release from prison (article 23 of the Penal Administration Act). In the past, the cost of meals and clothing for unconvicted prisoners were borne, in principle, by the prisoners themselves. But improvements were made to reduce the financial burden on the prisoner and to promote prisoner's convenience in accommodation; meals and clothing are supplied, in principle, by the State. The unconvicted prisoner, however, may still provide these needs for him or herself if desired (articles 20 and 21 of the Penal Administration Act).

123. Extended visitation rights for inmates. Visits to inmates were normally limited to relatives and any other persons who were permitted for certain purposes. The relevant provisions were revised to grant extensive visitation rights to inmates by allowing for visits by any visitor unless considered improper for reasons of edification (article 18, paragraph 2, of the Penal Administration Act). Inmates with good conduct records, in particular, are allowed to receive visitors freely in a separate and open place without the presence of a correction officer. Depending on the needs of inmate management, however, the number of visits may be restricted; unconvicted prisoners may receive one visit per day, and the frequency of visits allowed to convicts (i.e. one visit per day, one visit per week, three visits per month or two visits per month) is determined by his or her prison record.

124. Improved arrangements allow inmates to pursue creative activities. For example, inmates are allowed, without restriction, to personally possess writing tools, which had been regulated in the past; all inmates may be active in not only writing letters or documents, but writing literary works such as poems, novels and essays. With the authorization of the prison governor, inmates may even publish their literary works in newspapers, magazines, etc. (article 18 of the Penal Administration Act; articles 61, 66 and 67 of the Enforcement Decree of the above Act, article 46 of the Rule on Classification and Treatment of Prisoner).

125. Improvement of disciplinary measures against inmates. As a means of promoting the rights and interest of inmates, provisions on punishment of prisoners who have violated regulations were revised to emphasize humanitarian treatment and the educational goals of penal administration. For instance, nine types of punishment were reduced to five by abolishing diet restrictions,

prohibition of visits and correspondence, suspension of work and suspension of exercise, and prohibition of reading was eased (article 46, paragraph 2, of the Penal Administration Act).

126. Long-term prisoners. In the Republic of Korea, there are several long-term prisoners who have been serving sentences for more than 20 years. These persons were sentenced to life imprisonment for being involved in espionage, anti-State activities, and anti-humanitarian crimes such as killing of innocent citizens. They are therefore not considered to be prisoners of war. These persons do not benefit from parole, because a possible second offence cannot be precluded due to the ideological nature of the crimes and pure lack of remorse. In addition, the requirements for parole prescribed in the Penal Administration Act - a combined evaluation of conduct record, daily attitude, social adaptability - are not satisfied for these persons.

127. Even in cases of long-term prisoners not satisfying the requirements of parole, they are, if extremely aged or sick and if chances of a second offence are slim, released on parole or their penalty is suspended; from 1991 to 1996, 20 long-term prisoners, including Kim Seon-myeong and Ahn Hak-seop, have been released through general amnesty.

128. At correctional facilities, long-term prisoners are treated as other inmates in all aspects, including visits, correspondence, meals, exercise, medical care and accommodation. These persons receive correctional education such as paying visits to community establishments. The goal is to guide them back to participation in the free and democratic society. Conversion of thought and belief is not coerced and is completely dependent upon their own free will.

Paragraph 2 - Improvement of treatment of unconvicted prisoners

129. It was already observed in the initial report that prisoners awaiting trial or being tried were accommodated separately from convicts and granted various rights based on the principle of presumed innocence. The following improvements have been made since the submission of the initial report.

130. Under article 62 of the previous Penal Administration Act, provisions regarding convicts were comprehensively applied, mutatis mutandis, to untried prisoners. The revised Penal Administration Act, however, distinguishes the application of law and the treatment of unconvicted prisoners presumed innocent from those of sentenced convicts by strictly differentiating between provisions applied solely to convicts and those applied solely to unconvicted prisoners.

131. The rights to private communication with counsel and privacy of correspondence are protected to the utmost. A new provision with regard to unconvicted prisoners has been established to specify that correction officials are not permitted to be present, to listen to, or to record the contents of meetings between suspect and counsel, and in principle, letters from counsel are not to be examined (article 66 of the Penal Administration Act).

132. The Constitutional Court decided that "examination of correspondence between an unconvicted prisoner and defence counsel or to-be defence counsel under article 62 of the previous Penal Administration Act infringes the constitutional right of privacy of correspondence and right to counsel, unless there are reasonable causes to believe that items prohibited from possession such as narcotics have been inserted or that its contents violate penal laws by alluding to escape, destruction of evidence, discipline of the accommodation facilities, destruction of order" (92 HEONMA 144 of 21 July 1995).

133. Having unconvicted prisoners who are presumed innocent wear the same uniform as convicts is not desirable treatment, nor is it in conformity with the provisions of the Standard Minimum Rules for the Treatment of Prisoners, which state that "if [an untried prisoner] wears prison dress, it shall be different from that supplied to convicted prisoners". From January 1996 onward, the dignity of untried prisoners is protected by distinguishing their uniforms from those of convicts. As for convicts, the colour of men's and women's uniforms is indigo blue and gray respectively; as for untried prisoners, the men's clothes are brown and the women's are light green. As for self-provided clothes, various types of modern styles with comfortable and natural designs are allowed.

Paragraphs 2 and 3 - Coping with juvenile delinquents and separate accommodation

134. Juvenile delinquents under 20 years of age are only prosecuted under the ordinary penal procedure in felony cases. Otherwise their cases are classified as protective cases. The juvenile division of the court examines the cases and makes decisions on various protection measures such as accommodation in the juvenile reformatory, protective surveillance, commitment to juvenile protection facilities, and hand-over to parents or guardians for custody to ensure protection.

135. Juvenile delinquents brought to trial under ordinary penal procedures are accommodated completely separately from adult convicts. Until the terms of the sentence are decided, the juvenile delinquent is accommodated at detention houses in a zone segregated from adult prisoners. Afterwards, he or she is accommodated in a juvenile correction house.

136. Juvenile delinquents under arrest whose cases are classified as protective, are examined by the juvenile division of the court. A background history, intelligence quotient test and aptitude test are compiled at the Juvenile Classification Inspection Institute before the decision of the court, and after reflecting on the test results, the juvenile division of the court decides the type of protective measure such as accommodation in juvenile reformatory, protective surveillance, etc.

137. Juvenile offenders are also protected from harmful influence among juvenile offenders under article 8 of the Juvenile Reformatory Act, which provides that "persons under the age of 16 and above that age shall be accommodated separately".

138. Treatment of juvenile delinquents. Boys or girls accommodated in a juvenile reformatory are granted protection and correctional education according to the length of their sentence. The educational course depends upon the results of the classification examination by the Inspection Committee for the Classification of Juveniles under Protection. At present, juvenile reformatories are categorized by function, i.e. four educational reformatories, four vocational training reformatories, one girls' reformatory, one special reformatory and two general reformatories. Due to the increase in the number of juvenile delinquents with a habitual inclination to inhale hallucinogenic substances such as glue or butane, narcotics offenders are accommodated separately in one vocational training reformatory where medical treatment is given priority, alongside vocational education. Education reformatories run education programmes for elementary, junior high and senior high schools under the Education Act and promote advancement to higher levels of education or enrolment in other educational institutions. Through public vocational training, vocational training reformatories enable juvenile delinquents to obtain technical skill licences in 17 fields such as car maintenance. Juvenile offenders who have committed felonies such as organized crimes, however, are accommodated in a special reformatory for special education.

139. For well-behaved youths in juvenile reformatories, the family boarding system was introduced in May 1994. Family members may stay together for certain periods with the juvenile delinquents in an establishment detached from the reformatories. Even if their full term has not been served, juveniles are allowed to leave the reformatories more often to participate in family occasions such as a parent's sixtieth birthday (traditionally, parents' sixtieth birthdays have a special meaning in Korea) and weddings of brothers or sisters. The intention is to improve family relations and social adaptability (articles 52 and 53 of the Enforcement Decree of the Juvenile Reformatory Act).

140. Open prisons. Since 1 September 1988, open correction facilities without walls and locks have been in operation. Well-behaved prisoners are accommodated within and are allowed to commute to outside companies. From October 1991, commuting to work outside was extended to exemplary inmates of general correction facilities. To reduce the chances of a second offence, inmates may master modern technical skills, and after release from prison are employed at the companies where they received training. In 1995, an average of 1,000 inmates per day commuted to work outside.

141. Initially, open facilities of this kind were based on a directive of the Ministry of Justice. Prescription by law, however, was eventually provided by article 44, paragraph 2, of the revised Penal Administration Act (of 5 January 1995) which specifies that "Inmates with an excellent conduct record and high expectation of adaptation to society may be accommodated in an open facility ... and be granted treatment perceived necessary for social life".

142. Modernization of vocational and technical training. Vocational training was offered in order to stimulate the will of the convict and to have him or her master at least one technical skill so as to make employment more likely after release from prison. The system was revised in accordance with the

demands of today's industry for modern technical skills. The technical education is concentrated on jobs in high demand including computer programming, car maintenance and construction skills, with the aim of educating a highly skilled individual capable of competing in the workforce.

143. Prevention of criminal influence through internment of convicts by category. In order to prevent criminal influence from spreading among convicts and to operate effective edification programmes, in April 1994 correctional facilities were categorized in the following groups: (1) for first-time offenders; (2) for offenders with no more than two convictions; (3) for offenders with no less than three convictions; and (4) for special functions.

144. Establishment of the Life Guidance House for Future Parolees. For the efficient operation of the social rehabilitation training for convicts expecting parole, the "Life Guidance House for Future Parolees" was established in July 1994. To prevent a second offence, these individuals are put on parole after fulfilling both the commuting-to-work-outside programme and receiving the necessary training for two months in an open environment. To date, 66,241 future parolees have received social rehabilitation training.

Article 11

145. Under the legal system of the Republic of Korea, failure to perform contractual obligations incurs civil liability, but that mere failure does not constitute a crime. Thus, no person may be arrested or detained on the grounds that he or she fails to perform contractual obligations.

Article 12

146. The initial report already observed that freedom of residence and the right to move at will are guaranteed under article 14 of the Constitution and that these rights may be restricted only for the purposes of national security, the maintenance of law and order or public welfare.

147. Visits to the northern part of the Korean Peninsula (hereinafter referred to as "North Korea") without approval of the Government and knowing that it may endanger the national existence, security or free democratic basic order, is prosecuted under article 6 of the National Security Law.

148. The Republic of Korea, with an aim to achieve peaceful unification through a free and democratic method, adopted the South-North Basic Agreement of 9 February 1992, and legislated the Law on Exchange and Cooperation between the South and the North. Under this Law, any visits and trade of goods necessary for exchange and cooperation between the South and the North, with the consent of the Government, is allowed. Anti-State acts exceeding this framework are restricted under the Law from the viewpoint of national security.

149. Citizens and aliens sojourning in the Republic of Korea are guaranteed the freedom to leave the country. However, when deemed particularly necessary for national security or maintenance of order, certain minimum restrictions may be applied. As for citizens, article 4 of the Immigration Control Act

prescribes prohibition of departure of a person whose leaving the country is deemed to be particularly detrimental to the interests of the Republic of Korea or to criminal investigation. Furthermore, the Enforcement Rules of the above Law enumerate in detail the following reasons for which persons may be prohibited from departure: delinquency without justifiable cause in payment of national taxes, duties or local taxes beyond a certain amount; delinquency in payment of a fine or forfeit beyond a certain amount; failure to complete penal servitude or a prison sentence. Under the Enforcement Rules, a person may also be prohibited from leaving the country if that individual is a target of a criminal investigation or involved in a pending criminal case, or is the subject of suspension of execution of sentence or of indictment. As for aliens sojourning in the Republic of Korea, the Immigration Control Act specifies in article 29 that an individual's departure from the country may be suspended if that person is deemed harmful to the security or social order of the Republic of Korea; or if that individual is suspected of committing a grave crime and is under investigation; or is in arrears on the payment of taxes or other public imposts; or if that person's departure is deemed improper and damaging to the interests of the Republic of Korea.

150. Notice of prohibition or suspension of departure must be given to the person in question within three days after the decision has been made. Persons wishing to protest such a decision may file an objection with the Minister of Justice, and as a separate procedure, administrative adjudication or administrative litigation may be initiated.

Article 13

151. Expulsion of foreigners is limited to the causes for deportation specified in article 46 of the Immigration Control Act. Reasons for deporting foreigners under the above article are: entry without an appropriate visa; entry of persons prohibited from admission to the country; violation of the conditions set forth in the entry permission; landing without permission; violation of the conditions set forth in the landing permission; illegal sojourn or unauthorized employment; violation of scope of activity; attempt of illegal departure; violation of foreigner registration obligation; and crimes subject to imprisonment. In these cases, a foreigner would be expelled, because the extreme illegality involved would cause harm to the security or public order of the Republic of Korea.

152. In 1995, 1,420 of a total of 3,564,539 foreign entrants were expelled. The procedure for expulsion and the method of instituting a complaint have already been described in the initial report.

Article 14

Paragraph 1

153. The content of article 14, paragraph 1, of the Covenant is, as the initial report has observed, guaranteed under three articles of the Constitution: article 11, paragraph 1, of the Constitution provides that "all citizens shall be equal before the law"; article 27, paragraph 1, of the Constitution states that "all citizens shall have the right to be tried in conformity wich the law by judges qualified under the Constitution and the

law"; and article 27, paragraph 3, of the Constitution stipulates that "the accused shall have the right to a public trial ... in the absence of justifiable reasons to the contrary".

154. Independence of the Judiciary. In accordance with the principle of separation of powers, judicial power is vested in courts composed of judges (article 101, paragraph 1, of the Constitution). The Constitution provides that "judges shall rule independently according to their conscience in conformity with the Constitution and law" (art. 103), and herewith the judges are to rule independently from various social influences including the Executive, the Legislature and the press.

155. To prevent interference by the administration in the judicature, qualifications for judges are determined by law (article 101, paragraph 3, of the Constitution; article 42, paragraph 2, of the Court Organization Act). Independence of personnel management in the judicature is guaranteed by providing that the Chief Justice and Justices of the Supreme Court be appointed by the President with the consent of the National Assembly and that judges other than the Chief Justice and the Supreme Court Justices be appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices (article 104 of the Constitution). The term of office and retirement age of judges are guaranteed by law (article 105 of the Constitution), and at the same time, no judge is removed from office except by impeachment or by receiving a sentence heavier than imprisonment (article 106, paragraph 1, of the Constitution). Thus, the judge's independent status is fully guaranteed.

156. In a decision relating to the removal from office of a judge, the Constitutional Court has upheld the guarantee of the judge's status and the independence of the Judiciary by stating that "the independence of the Judiciary signifies not only independent trials but also guaranteed status of a judge; guaranteed status is essential for the independence of judges at trials, and measures related to judges, i.e. removal, dismissal from office or disadvantages, not complying with legitimate legal procedures, are prohibited" (Decision 91 HEONGA 2 of 12 November 1992).

157. Organization of the Court. The courts shall be composed of the Supreme Court, which is the highest court of the State and other courts at specified levels (article 101, paragraph 2, of the Constitution). Detailed organization of the above courts shall be determined by law (article 102, paragraph 3, of the Constitution). In accordance with the provisions of the Constitution, the Court Organization Act provides for the High Court, District Court, Patent Court, Administrative Court, and Family Court. In order to deal efficiently and specifically with patent and administrative cases, the legal foundation for the Patent Court and Administrative Court was established through a revision of the Court Organization Act on 6 December 1995. Their operations will start on 1 March 1998.

158. Considering the special characteristics of the armed forces, article 110, paragraph 1, of the Constitution defines Court Martial as a special court distinguished from courts in general. The organization and competence thereof is prescribed by law. In principle, the Court Martial exercises jurisdiction over military trials of individuals of special status

such as soldiers and other military personnel. In exceptional cases involving the crime of divulgence of important military secrets, crimes in regard to sentinels, sentry posts, supply of harmful foods and beverages, prisoners of war, and military equipment as defined by the Military Penal Law, civilians may fall under the jurisdiction of the Court Martial (article 27, paragraph 2, of the Constitution; article 2 of the Court Martial Act). The distinctive character of the Court Martial as a military institution, with regard to its establishment or jurisdiction, is recognized. Its operation, however, is very similar to that of ordinary judicial institutions, and its fairness is guaranteed. A military judge of the Court Martial, as ordinary courts, holds a lawyer's licence and is appointed from judge advocates with guaranteed status. In addition, the Court Martial Act has provisions similar to those of the Penal Procedure Code to avoid infringement of fundamental rights of the accused in the process and administration of a military trial (articles 48 to 533 of the Court Martial Act).

159. The principle of public trial and exceptions. A trial, in principle, has to be public. In the Constitution, article 27, paragraph 3, provides that "the accused shall have the right to a public trial," and article 109 states that "trials and decisions of the courts shall be open to the public, provided that when there is a danger that such trials may undermine the national security or disturb public safety and order, or be harmful to public morals, trials may be closed to the public by court decision". In case the court has decided to hold closed sessions for the above reasons, the reasons have to be stated in the protocol (article 142 of the Civil Procedure Code and article 51, paragraph 2, of the Penal Procedure Code). Even in these cases, the decisions naturally shall be made public.

Paragraph 2

160. Presumption of innocence is, as described in the initial report, explicitly provided for in article 27, paragraph 4, of the Constitution and article 275-2 of the Penal Procedure Code. Under this principle, the public prosecutor is obliged to prove the commission of a crime, and the judge may pass a guilty verdict only when there is sufficient evidence without any reasonable doubt. The Supreme Court made the observation that conviction at a criminal trial requires evidence with probative value leading to the firm belief of the judge on the veracity of the facts constituting the crime, preclusive of any reasonable doubts; without evidence with this kind of probative power, it has to be decided to the benefit of the accused, even if the accused appears to be guilty" (Decision 92 DO 1405 of 1 September 1992).

Paragraph 3

161. The rights of the accused in a criminal trial were illustrated in detail in the initial report, but the following reforms have been made since the initial report was transmitted.

162. Subparagraph (b) - Provision of the right to communicate with the defence counsel and facilitation of preparation of defence. It was pointed out that the right to counsel of the arrested suspect was restricted in the investigative process of the Agency for National Security Planning. The

Republic of Korea revised the Agency for National Security Planning Act on 5 January 1994 to provide a thorough guarantee of the right to counsel. A provision was added that "agents of the Agency for National Security Planning engaged in investigative affairs shall comply with the procedure prescribed under article 34 of the Penal Procedure Code guaranteeing the right of counsel" (art. 11, para. 2). Agents infringing upon the rights of the suspect or his or her defence counsel through violation of this provision are subject to punishment (art. 9, para. 2).

163. The revised Penal Administration Act of 5 January 1995 provides for more substantial guarantees of the right to counsel by precluding the presence of correction officials when a suspect is receiving his or her counsel. The Penal Procedure Code revised on 29 December 1995 recognizes rights of the accused to inspect or copy, in addition to the protocol of public trial, documents or articles of evidence relating to the litigation pending in the courts.

164. On the right to counsel, it was expressed by the Supreme Court that "The right to counsel is indispensable for the protection of human rights and the preparation of defence of the accused or suspect placed under physical restraint. Unless it is restricted under the law, decisions by neither the investigative agency nor the court may restrict this right; in this case, interview with the counsel was arranged beyond the requested date, and this being equivalent to disapproval of the interview, the right to counsel has been infringed" (Decision 91 MO 24 of 28 March 1991).

165. Subparagraph (d) - Legal aid for criminal cases. In the Republic of Korea, the aforementioned Korea Legal Aid Corporation (KLAC) was established in 1987 to provide legal aid to the underprivileged for civil cases. Since 1 June 1996, legal aid services have been extended to criminal cases. Therefore, if the accused in a criminal case is a farmer or fisherman, an individual eligible for livelihood protection, a worker with financial difficulties, or a small-scale businessman, he or she may turn to the KLAC to appoint KLAC-registered lawyers or public judge advocates as defence counsel, free of charge, and obtain legal assistance (article 5 of the Rules on Legal Aid Case Administration). A criminal defendant who cannot afford counsel may not only apply to the court for defence counsel appointed by the State, but also turn directly to KLAC to obtain sufficient support of the defence counsel.

166. Introduction of the Public Judge Advocate System. The Public Judge Advocate System was introduced in 1995 to have bearers of a lawyer's licence (who have passed the bar examination and completed the training programme at the Judicial Research and Training Institute) engage in legal aid operations in exchange for being exempted from military service. In the past, the above individuals were made to serve as common judge advocates or military police officers, but in order to utilize manpower specialized in legal affairs and to efficiently stimulate legal aid activities for the underprivileged, the relevant individuals are now engaged in legal aid operations of the KLAC with the status of public servants. With the introduction of this system, underprivileged citizens unable to afford highly paid private lawyers can now turn to pro bono publico judge advocates for legal consultations and, when

necessary, appoint pro bono publico judge advocates as their counsel for civil or criminal cases. A pro bono publico judge advocate, as a public servant, receives a salary from the State, and no fee whatsoever will be accepted from the client.

167. Subparagraph (e) - Right of the accused and his or her defence counsel to examine witnesses. The accused or his or her defence counsel may be present at the examination of a witness (article 163, paragraph 1, of the Penal Procedure Code). Not wishing to be present at the examination of a witness, the accused or his or her defence counsel may make an inquiry to the court as to the matters examined during the interview. In case the testimony of a witness, given in the absence of the accused or his or her defence counsel, contains an unexpected and/or serious statement which is disadvantageous to the accused, the court shall give notice of the contents of such a statement to the accused or the defence counsel (article 164 of the Penal Procedure Code). Upon recognition that a witness cannot make a sufficient statement in the presence of the accused, however, the accused can be ordered to withdraw from the court to allow the witness to state his or her opinion. In this case, when the witness has finished his or her oral statement, the gist of the statement shall be announced to the accused by the court official after returning the accused to the courtroom (paragraph 297 of the Penal Procedure Code).

168. In case persons who are deemed to know facts that are indispensable for the investigation refuse to make an appearance or make statements at the request of a public prosecutor or judicial police officer, the public prosecutor may petition judges for the right to question such persons as witnesses before the date of the first public trial. If it is deemed by the judges that there is no obstacle to the investigation, they shall have the accused, suspects or defence counsels participate in the interrogation of witnesses (article 221-2, paragraph 5, of the Penal Procedure Code). The right to examine witnesses is thereby guaranteed.

169. Subparagraph (g) - Notification of the right to remain silent and the right not to be compelled to testify. The right of the accused to remain silent is stipulated in article 12, paragraph 2, of the Constitution and article 289 of the Penal Procedure Code. A public prosecutor or judicial police officer is under obligation to inform a suspect in advance that he or she may refuse to answer questions (article 200, paragraph 2, of the Penal Procedure Code). Moreover during proceedings, the presiding judge is required to notify the accused in advance that he or she may refuse to make statements (article 127 of the Rules on Penal Procedure). The accused's right to remain silent has thus been fully guaranteed.

170. The Supreme Court has underlined the importance of prior notification of this right by finding that "in case an investigation agency has not notified a suspect in advance that he or she has the right of refusal of statement, probative value of a confession is to be denied as illegal evidence, even if the confession was voluntarily made" (Decision 92 DO 682 of 23 June 1992).

Paragraph 5

171. Part III of the Penal Procedure Code recognizes the right of an accused to appeal to a High Court and to appeal to the Supreme Court after a High Court. Furthermore, according to Part IV of the Penal Procedure Code, the accused is entitled to a reopening of the case. The right of the accused to appeal to a High Court and to appeal to the Supreme Court is also guaranteed in military trials. In case of military trials, the court of first, second and third instance shall be the ordinary court-martial, High Court-Martial and Supreme Court, respectively. Military trials under an extraordinary martial law may not be appealed in the following cases (with the exception of death sentences): crimes committed by soldiers and employees of the military, crimes of military espionage, crimes as defined by law against sentinels, sentry posts, supply of harmful foods and beverages, and prisoners of war (article 110, paragraph 4, of the Constitution, article 534 of the Martial Court Act). These provisions aim at prompt recovery of the constitutional order under extraordinary martial law.

Paragraph 6

172. According to the Penal Compensation Act, the accused may apply for penal compensation not only in case of a not-guilty judgement in the regular penal procedure, but also a not-guilty judgement passed in the renewed procedure after the initial conviction. The amount of compensation allowed is equal to the sum explained in the comment on article 9, paragraph 5, of the Covenant.

Paragraph 7

173. Article 13, paragraph 1, of the Constitution proclaims the principle of *ne bis in idem* by providing that "no citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed, nor shall he be placed in double jeopardy". Cases in which a final binding judgement has already been rendered on a certain criminal act and another indictment has been issued on the same act, the court shall dismiss that indictment (article 326, subparagraph 1, of the Penal Procedure Code).

174. The Republic of Korea made reservations on article 14, paragraph 7, at the time of ratification of the Covenant, but reservations were withdrawn on 21 January 1993 following the conclusion that there was no longer a substantial need for them to be maintained.

Article 15

175. Article 13, paragraph 1, of the Constitution prohibits *ex post facto* laws by providing that "no citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed". Article 1 of the Criminal Code reconfirms the above principle and goes on to state that "when a law is changed after the commission of a crime, such act thereby no longer constitutes a crime under the new law, and in case the punishment under the new law is less severe than under the previous law, the new law shall apply. If a law is revised after a certain act is punished and if such act thereby no longer constitutes a crime under the revised law, the execution of the punishment shall be remitted".

176. Article 47, paragraph 2, of the Constitutional Court Act provides, to the same effect, that "if the law or articles are ruled unconstitutional, they shall lose their effect retroactively". In the event a guilty verdict was rendered under a law that has been ruled unconstitutional, the accused can request a retrial.

Article 16

177. The rights in article 16 of the Covenant are covered by article 10 of the Constitution, which provides that "all citizens shall be assured of human worth and dignity and have the right to pursue happiness; it shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights". The intentions of the Constitution are substantiated through relevant laws and regulations by reaffirming paramount respect for the rights of individuals.

178. Article 3 of the Civil Code provides that "all persons can enjoy rights and assume duties during their lives", and under certain circumstances, an unborn child is also capable of enjoying rights. The limited legal capability of an unborn child is addressed in article 762 of the Civil Code, which states that "an unborn child shall, in respect of its claim for damages, be deemed to have been already born". Furthermore, article 1000, paragraph 3, sets forth that "with respect to the order of inheritance, an unborn child shall be considered to have already been born". In addition, the Criminal Code stipulates crimes of abortion so that acts of abortion under certain circumstances can be prosecuted.

Article 17

179. Regarding legal provisions of the Republic of Korea related to article 17 of the Covenant, the initial report already stated that articles 16, 17 and 18 of the Constitution stipulate freedom of residence, protection of privacy and freedom of correspondence. The above articles have been incorporated in the Criminal Code, the Civil Code, the Minor Offence Punishment Act, the Postal Services Act, the Korea Telecom Act, etc.

The Act on Protection of Personal Information Regarding Public Institutions

180. Since 1983, the Republic of Korea has been advancing a master plan for a national computer network. The establishment of a nationwide administrative computer network has shortened the time required to issue papers and connect the national civil service, as well as made joint utilization of administrative materials among government agencies possible. On the other hand, personal information on the average individual in the form of electronic data has greatly increased over the same period, causing some problems such as leakage of electronic data which would likely lead to infringement of privacy. This situation has increased the need to ensure the protection of an individual's privacy.

181. In response to this need, the Act on Privacy and Protection of Individual Information Regarding Public Institutions was legislated on 7 January 1994. Under the Act, public institutions are prohibited from collecting data such as thoughts or beliefs of individuals (art. 4, para. 1)

that may infringe on fundamental human rights. Individuals may inspect data on themselves that have been processed, and demand that corrections be made for inaccurate information (art. 14). The act of leaking personal information or providing it for an another person's use is subject to punishment (art. 23, para. 2). Individuals or organizations other than public institutions are punished when they obtain processed data from a public institution by illegal means (art. 23, para. 3). As a result, information on individuals is protected to the highest degree.

Enactment of the Correspondence Privacy Protection Act

182. The Correspondence Privacy Protection Act was legislated on 27 December 1993 and carried into effect on 27 June 1994. This legislation is designed to protect the privacy of correspondence and to promote freedom of correspondence by requiring strict legal procedures in case of restricting privacy or freedom in correspondence and communication for the purposes of a criminal investigation, for example. Article 3 of the above Act prohibits in principle the examination of mail, tapping of telecommunications, and recording or listening to private conversations. If restrictive measures on correspondence are crucial and inevitable for crime investigations, the investigating agencies are required to obtain authorization from the courts (art. 5), while the intelligence agency must obtain authorization from the Chief Judge of the High Court or approval from the President in case unavoidable restriction upon correspondence is necessary for national security (art. 7).

Protection of correspondence under the Telecommunication Business Act and the Radio Waves Act

183. Under article 54 of the Telecommunication Business Act, no one, including persons who are or have been engaged in telecommunication services, shall violate or leak private correspondence. Furthermore, under article 42 of the Radio Wave Act, no one shall leak or use other people's secrets obtained through wireless correspondence, hence avoiding wiretapping and protecting freedom of correspondence.

184. In December 1991, the Telecommunication Business Act and the Radio Waves Act were revised to include more severe punishment of persons infringing upon other's freedom of correspondence.

Protection of freedom of residence in times of search

185. Police officers may enter other people's land or buildings in case of a criminal act or other extraordinary situations where danger to human life, body or property is apparent and such entrance is necessary to prevent danger or save the injured (article 7 of the Police Officer Duty Performance Act). Searching residences during a criminal investigation requires a warrant issued by a judge of the competent district court (article 215, paragraph 2, of the Penal Procedure Code). Insofar as is possible, the presence of third persons is required during the execution of search warrants. The aim is to fully protect the freedom of residence and, at the same time, preclude arbitrary interference by public authorities (articles 149 to 152 of the Rules on Investigation of Crimes).

Article 18

186. It was observed in the initial report that the Constitution sets forth the freedom of conscience and the freedom of religion in articles 19 and 20 respectively, the rights stated in article 18 of the Covenant providing for protection of the inner spiritual life of a human being being guaranteed thereby. Article 19 of the Constitution underlines freedom of conscience. The Constitution also stipulates that members of the National Assembly (art. 46, para. 2) perform their duties and that judges (art. 103) rule based on their conscience, respectively.

187. State authorities shall not intervene when individuals make their own decisions based upon their conscience. The State shall neither promote certain ideologies nor suppress ways and means necessary for citizens to freely cultivate their thoughts.

188. In regard to freedom of conscience, the Constitutional Court observed that "freedom of conscience includes not only the inner aspect but also freedom from coercion". Namely, the State shall not interfere in moral judgements such as right and wrong. Nor shall it coerce citizens to express their moral judgement (89 HEONMA 160 of 1 April 1991).

189. The Supreme Court provides substantial protection for the freedom of conscience by deciding that "keeping a diary with contents sympathetic to anti-State organizations, if it does not involve any actual effect in the outside real world, cannot be punished" (Decision 73 DO 3392 of 9 December 1975).

190. The Constitution has not clearly stated freedom of thought, yet freedom of conscience found in article 19 in the Constitution is interpreted to include freedom of thought.

191. The Republic of Korea tolerates individuals' thoughts of any kind, including, inter alia, communism, and the Juche ideology of North Korea. However, acts that endanger the existence and security of the State through agitation of violent revolution or attempts to overthrow the free and democratic system by carrying out these thoughts, is subject to punishment. Persons being punished due to the above acts receive correctional education in penitentiaries in order to guide them back to the free and democratic society. Conversion of thought, however, is left to their own free will.

192. In addition to the provision of freedom of religion in article 20, paragraph 1, the Constitution states in article 20, paragraph 2, that "no State religion shall be recognized, and religion and politics shall be separated". Article 5, paragraph 2, of the Education Act provides that "national and public schools shall not be allowed to carry on religious education for the sake of a religion". This signifies that no State religion could exist under the constitutional order of the Republic of Korea, where freedom of religion is guaranteed. The State is prohibited from adopting a policy that interferes in religion or treats certain religions preferentially. Political activities of religious organizations are also forbidden. However, individual involvement in political activities directly or through participation in a separate association is allowed.

193. Religious neutrality of the State, as underscored in the Constitution, is not merely a logical conclusion of the freedom of religion. It highlights the function of freedom of religion in an objective order of values by clarifying the equality of religion and prohibiting sacralization of politics and politicization of religions.

194. At present, various religions, including Buddhism, Protestantism, Roman Catholicism and Won Buddhism, coexist in the Republic of Korea; Buddhism and Protestantism are among the largest in terms of number of followers. No regional peculiarity can be perceived, and all religions are equally distributed nationwide.

Article 19

195. It was already observed in the initial report that the rights under article 19 of the Covenant are covered by articles 19, 21, 22 of the Constitution and relevant laws such as the Broadcast Act. Rights regarding freedom of expression provided in article 19, paragraph 2, of the Covenant are respected to the maximum degree as the core of spiritual freedom and cornerstone of a democratic society. However, considering the social aspect of the freedom of expression, and unlike the right to hold opinions in article 19, paragraph 1, of the Covenant or the right to freedom of thought in article 18 of the Covenant, the freedom of expression has its own inherent limits. As for the limits, article 21, paragraph 4, of the Constitution provides that "neither speech nor the press shall violate the honour or rights of other persons nor undermine public moral or social ethics". In addition, the following legislation makes clear the special obligation and responsibility involved in the exercise of the above right: provisions on distribution of obscene materials etc. (article 243 of the Criminal Code), defamation through printed materials (article 309 of the Criminal Code), prohibition of propaganda on agitation, insurrection and foreign aggression (article 90, paragraph 2, and article 101, paragraph 2, of the Criminal Code), prohibition of broadcasts advocating a certain political party or group (article 5, paragraph 3, of the Broadcast Act) and prohibition of agitation and destruction of national public order (article 7, paragraph 1, of the National Security Law). These should be deemed the necessary minimum restrictions.

Presentation of periodicals to the authorities and freedom of expression

196. Article 10 of the Act Relating to the Registration of Periodicals prescribes that when a periodical is published, two copies shall be delivered to the Minister of Public Information. This delivery is merely an administrative confirmation of publication and not a restriction prior to the publication of a periodical. The Act Relating to the Registration of Periodicals stipulates sanctions in case some basic information is not printed as registered. This information (for example, the title, publisher, etc.) should be printed as registered and not altered at will. The delivery of books to the Ministry of Public Information is required to decide whether those provisions are being observed.

197. Concerning the constitutional status of this periodical inspection system, the Constitutional Court has decided that "the delivery system does

not signify pre-censorship on speech and press, therefore does not infringe freedom of speech and freedom of press. The fine prescribed to guarantee an effective delivery system is reasonable and therefore not unconstitutional" (Decision 92 HEONBA 26 on 26 June 1992).

Review of works of expression

198. Performances, motion pictures and video works must be reviewed by the Performance Moral Committee instituted by article 25-3 of the Performance Act. The Performance Moral Committee consists of 18 persons from various circles of society including the arts, the press, publishing, and education; all members being civilians, this Committee is an independent organization.

199. The Performance Moral Committee, using guidelines such as the protection of the basic constitutional order, maintenance of public order, protection of public morals, protection of children and youth, and sexual morality in family life may minimally restrict the presentation or release of performances for reasons of national security, public order and public morals. The review of the Performance Moral Committee in 1995 has resulted in the following.

	Total	Passed	Censorship required	Rejected
Stage performances	2 419	2 419	none	none
Motion pictures	839	627	182	30
Video works	4 855	3 816	881	158
Advertisement	19 014	16 508	2 092	414

200. In the past, musical recordings were also reviewed by the Performance Morals Committee. But with the possibility of records damaging good public order and customs being small, the necessity of reviewing of records was considered insignificant. As a result, the revised Act relating to Records and Video Works of 6 December 1995 prescribes review on demand only.

Present situation of periodicals and broadcasting companies

201. As of February 1996, a total of 9,893 periodicals (i.e. 149 daily, 2,920 weekly, 3,748 monthly, 900 bimonthly, 1,473 quarterly, 378 biannual and 325 annual periodicals) are registered in the Republic of Korea. As for broadcasting, 14 radio and television broadcasting stations and 53 comprehensive cable television broadcasting corporations exist. Twenty-eight licensed companies are supplying the programmes.

Guarantee of neutrality of broadcasts

202. The Broadcast Act, in addition to the guaranteed freedom of broadcast programming, emphasizes the public nature of broadcasting in article 5 by stating that "News broadcasts shall be impartial and objective; the broadcast shall not support or advocate a certain political party, group, interest, belief or thought". Article 31 decrees that "the broadcasting programme shall be drawn up so that each field of interest, i.e. political, economic, social, cultural, etc., may be expressed harmoniously in a proper ratio", so that broadcasting equally reflects the voice of every citizen and is not being partial to a certain interest or group. The neutrality of broadcast is also guaranteed from the aspect of organization of the broadcasting corporations. This neutrality has been instituted so that persons from various circles including academia, the press, legal professions, and those who are politically and socially neutral, will be selected as members of the executive board.

The National Security Law and freedom of expression

203. The National Security Law was enacted on 1 December 1948 to both cope with North Korean manoeuvres to destroy the Republic of Korea and protect the democratic system that guarantees life and freedom for the people living under the special situation found on the Korean Peninsula. The above Law has undergone eight revisions, and its contents have been supplemented and improved not only to protect national security, but also to prevent human rights violations. During the seventh revision on 31 May 1991, a declaratory clause was inserted to provide that "construction and application of the National Security Law shall remain at the minimal level, and shall not extend the interpretation or wrongfully restrict fundamental human rights of citizens guaranteed under the Constitution" (art. 1, para. 2). Also, provisions likely to cause encroachment on human rights were fully reviewed.

204. As for article 7 of the National Security Law, which concerns praising, encouraging and propagating anti-State organizations and producing or distributing materials for the benefit of an anti-State organization, a phrase of subjective condition was added (i.e. "taking cognizance of the endangerment of the existence and security of the State or the principle of freedom and democracy"). The application of this article became more strict and specific, compared with other penal laws such as the Criminal Code.

205. Above all, all the concepts in the National Security Law, since its enactment 50 years ago, have been clearly defined through the jurisprudence of the Supreme Court, the decision of the Constitutional Court and some academic theories. This has diminished the chances of the law being subjected to arbitrary interpretation. As a consequence, abuse by investigation agencies is almost out of the question. The Constitutional Court has firmly defined that "endangerment of the existence and security of the State signifies threatening and infringing the independence of the Republic of Korea, intruding on its territory, destroying and paralysing the function of the Constitution, laws and constitutional institutions; endangerment of free democratic basic order means complicating the self-governing of the people through [...] violent and arbitrary rule and the suppression of the united constitutional order based on freedom and equality".

206. The purpose of article 7 of the above Law is not intended for punishment of those who study or simply profess communism or the Juche ideology. Rather, it is for cases in which such expressions of thought exceed the inherent limits and incite anti-State activities i.e. agitation of violent revolution or assertion of overthrowing the free and democratic system. Therefore, the above article does not constitute an infringement upon the freedom of expression.

207. It was pointed out that the objectives of the National Security Law could be achieved under the crime of espionage, etc. of the Criminal Code, if the National Security Law were to be abolished. However, the present system of law of the Republic of Korea, starting from the Constitution (art. 3), does not consider North Korea as a State, so the crime of spying in the Criminal Code involving an "enemy country" is not applicable, making a special law called the National Security Law necessary.

208. North Korea has persistently adhered to the communization of the Republic of Korea based on revolutionary ideas of so-called "single Chosun" in the covenant of its Labour Party and Socialist Constitution. The National Security Law is a special law in force that is a minimum legal instrument required to safeguard the national security against the strategies of North Korea.

Article 20

Stipulation of the Constitution and laws on the pursuit of peace and the prevention of war

209. The Constitution is based on the ideal of the pursuit of peace. To realize this goal, "the mission of ... peaceful unification of our homeland" is emphasized and the will to "contribute to lasting world peace and the common prosperity of mankind" is expressed in the preamble to the Constitution. Article 5, paragraph 1, of the Constitution also provides that "the Republic of Korea shall endeavour to maintain international peace and shall renounce all aggressive wars".

210. A person who agitates to commence hostilities or propagates war against the Republic of Korea in conspiracy with a foreign country or to spy for an enemy country is punished under article 101, paragraph 2, of the Criminal Code. A person who propagates war between other States in violation of neutrality orders is punished under article 112 of the Criminal Code.

Efforts of the Republic of Korea in pursuit of peaceful unification under the particular circumstances in South-North relations

211. The Republic of Korea, unlike other nations, has greatly suffered from division. To overcome this reality, the Republic of Korea has set unification as the ultimate national task and has consistently pursued the principle of peaceful unification founded upon the basic order of free democracy. Article 4 of the Constitution stipulates that "the Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on a free democratic order". Article 66, paragraph 3, states that "the President shall have the duty to faithfully pursue the

peaceful unification of the homeland". The nation's resolve to achieve peaceful unification is also declared in article 92, paragraph 1, which provides that "an Advisory Council on Democratic and Peaceful Unification may be established to advise the President on the formulation of peaceful unification policy".

212. The Government has made endless efforts towards peaceful unification. On 1 August 1990, the Law on Exchange and Cooperation between the South and the North was enacted to regulate traffic, trade, cooperative projects, and provisions for communication services between the South and the North. The foundation for peaceful unification was strengthened with simultaneous accession of both sides to the United Nations in September 1991. On 19 February 1992, the Agreement on Reconciliation, Non-aggression, Exchange and Cooperation between the South and the North was reached. It clearly described that "aggression and conflict using force should be avoided, and the relaxation of tension and peace should be guaranteed". In particular, article 3 of the Agreement expressed that "the South and the North shall neither libel nor defame each other". Article 9 sets forth that "the South and the North shall not use force against each other and not aggress each other by using force", while article 10 declares that "the South and the North have to solve peacefully differences in opinion and contentious problems through dialogue and negotiation". All these provisions have provided a foundation from which war can be prevented on the Korean Peninsula. Moreover an "Attached Agreement for Execution and Observance of South-North Reconciliation" has been arranged. For the implementation of these Agreements, North-South dialogue should be resumed as soon as possible.

Article 21

213. As the initial report mentioned, article 21 of the Constitution protects the freedom of assembly by providing that "all citizens shall enjoy freedom of assembly. Permission of assembly shall not be recognized". However, the Act Concerning Assembly and Demonstration has been legislated to guarantee peaceful assembly and demonstration and protect citizens from illegal violent assemblies. The Act prohibits assemblies or demonstrations which represent a clear threat to public peace and order through mass violence, intimidation, destruction and arson, or which intend to achieve the objectives of a political party dissolved by a decision of the Constitutional Court (art. 5). Open-air assemblies or demonstrations before sunrise or after sunset (art. 10) and open-air assemblies or demonstrations held in public places such as the National Assembly building and the Court, or on main roads (forbidden or restricted under the presidential decree due to traffic congestion), are prohibited for the maintenance of order.

214. A person who intends to hold an assembly does not need permission from the authorities, but in case of open-air assemblies or demonstrations, reporting to the chief of the relevant police station is required for administrative purposes. A person intending to hold an open-air assembly or demonstration must submit to the relevant police station, at least 48 hours prior to the assembly or demonstration, the necessary papers referring to the purpose, date and time, place, sponsor, contact person, name-address-vocation of the person responsible for the organization, the number of people expected to participate, and the method of demonstration (art. 6). The police station

chief receives the application and uses it for administrative reference. For example, if the assembly or demonstration in the application is prohibited under the Act Concerning Assembly and Demonstration, the police chief may notify the sponsors of this fact within 48 hours from the time of application. This notification does not imply permission for assemblies or demonstrations by the chief of police. The police chief is simply drawing the attention of the organizers to the fact that certain assemblies are forbidden under relevant laws.

215. In the Republic of Korea, the radical and violent demonstration atmosphere formed under the military regimes of the past has yet to completely vanish. Some demonstrations lead to the occupation of traffic lanes in city centres, the use of firebombs and stones, and attacks on public offices. For this reason, the police review the purpose of the assembly or demonstration, the sponsors previous record of violent demonstration, the inclination of the participants, the ability of the sponsors to control the participants, and the likelihood of firebombs. If it is deemed most likely that the demonstration will turn violent, the organizers are notified that it is not allowed under the Act Concerning Assembly and Demonstration. This is not due to the anti-Government nature of the assembly or demonstration, but only because of the anticipated violence.

Article 22

Guarantee of freedom of association

216. Article 21 of the Constitution guarantees the general freedom of association and prohibits prior control over association by providing that "all citizens shall enjoy freedom of association ... giving permission to associations shall not be admitted". In addition, article 33, paragraph 1, guarantees freedom of association of workers by stating that "to improve working conditions, workers shall have the rights of organization, collective bargaining and collective action". To guarantee workers' rights to organize, article 8 of the Labour Union Act provides that "employees (who live on wages, salaries and/or other income) may freely organize or join labour unions". This allows two or more workers to organize any kind of a labour union. Article 39 of the Act prohibits management from dismissing an employee for his or her involvement in the organization and rightful participation in the activities of a trade union. This article also forbids management from interfering in the operation of a labour union or rejecting a request for collective negotiation from a labour union. The worker or union can bring a case of unfair labour practice on the part of the employer to a labour committee composed of representatives from labour, management and public interest groups. The committee may grant relief and recommend criminal punishment of the employer.

Restrictions upon freedom of association

217. Freedom of association may be restricted by law if absolutely necessary for national security, the maintenance of law and order or for public welfare. Article 37, paragraph 2, of the Constitution describes the general principle of restricting basic rights. Article 33, paragraph 2, of the Constitution provides that only those public officials who are designated by law shall have

the rights to organization, collective bargaining and collective action. In accordance with this clause, the Labour Union Act and the National Civil Service Act restrict the above-mentioned rights in regard to public servants. The scope of and reasons for these restrictions are stated in the initial report.

218. Article 66 of the National Civil Service Act and article 55 of the Private School Act prohibit the organization of teachers' unions. Teachers share common attributes of other workers from the viewpoint that they engage in educational affairs and receive salaries in return. Due to the public and moral dimension that education contains, however, teachers bear the same social responsibilities as other public servants, and this special character of teachers' function is deeply rooted in the minds of the people of the Republic of Korea. Moreover, the prohibition of teachers' unions guarantees citizens' rights to education and maintains the nature of the education system for the benefit of the public, given the fact that the work relationship of teachers cannot be considered the same as that of common workers.

219. As a practical measure to guarantee teachers' rights to organize, article 80 of the Education Act provides that "teachers may organize Education Associations at central as well as local levels for the purpose of ... promoting their own economic and social status". The Special Act for Improvement of Status of Teachers, effective as of 31 May 1991, provides in articles 11 and 12 that the Education Association can negotiate with or consult with the Minister of Education or the Superintendent of Educational Affairs on the improvement of treatment and work conditions for teachers.

220. Regarding the Private School Act, which prohibits the organization of private school teachers' unions, the Constitutional Court decided that since private school teachers can promote their economic and social status through the Education Association, restrictions or prohibition of the exercise of workers' three basic rights (rights to association, collective bargaining and collective action) cannot be said to have violated the essential aspects of their basic rights. These restrictions are not unconstitutional because the legislator has determined that they are necessary and adequate to maintain the nature of the educational system in the interest of the public, and considering in full the special character of teachers' status and historical realities of this nation (Decision 89 HEONMA 106 of 22 July 1991).

221. In a decision on article 66, paragraph 1, of the National Civil Service Act restricting the three basic labour rights of public servants, the Constitutional Court stated that "this provision prohibiting labour movements by public officials except for those by actually engaged in labour does not violate the Constitutional provision of equality" (Decision 92 HEONBA 1 of 28 April 1992).

222. Article 3, item 5, of the Labour Union Act stipulates that a planned labour union will not be approved in case it has the same organizational objective as an existing labour union, or if it aims to interfere with the normal operation of such a union. This provision has taken into account the fact that most of the labour unions are established on an enterprise basis in the Republic of Korea. It is feared that the existence of two or more unions aiming for the same group of workers who are already members of a union could

result in troubles, such as the disintegration of a labour union, weakened negotiation capabilities, complication of the negotiating process, and disputes among workers and between workers and employers. The terms of the Labour Union Act are designed to avoid these developments.

Accession to ILO

223. On 9 December 1991, the Republic of Korea became a member of the International Labour Organization, the last United Nations specialized agency for the Republic of Korea to join. Since 16 June 1996, the Republic of Korea has been participating more vigorously in its affairs as a member of the Council. After accession to the ILO, the Government has been exerting greater efforts to promote workers' rights and enhance international cooperation in the field of labour.

Revision process of the labour-related laws

224. In 1987, the present Labour Union Act underwent a major revision in keeping with the general trend of democratization of society. Such restrictive provisions as limitations on the establishment of labour unions were eliminated to guarantee a free and independent labour movement. Since then, suggestions have continuously been made by various social sectors on matters that either do not meet the current industrial realities or could possibly restrict workers' rights. In particular, confrontation between labour and management over the issues of multiple labour unions, ban on third party intervention, replacement of striking workers, flexible working hours system and dismissal for managerial reasons has made a reasonable compromise an elusive task. In March 1996, the Government launched the Presidential Committee on Labour Reforms composed of individuals from various fields including employees, employers, scholars, etc. This Committee aims at reforming industrial relations through revisions in labour-related laws and restructuring of the labour administration organizations.

Registration of political parties

225. The initial report already stated that a political party, in view of its importance, is given special protection under the Constitution. In order for an organization to be registered as a political party eligible for such protection, it should secure sub-organs necessary to form citizens' political opinions. According to the Political Party Act, for an organization to be registered as a political party, it must be composed of a central party and district chapters equal to a tenth or more of the total regional electoral districts for the National Assembly members (art. 25) with adequate geographical distribution (art. 26). When the requirements are no longer satisfied, the Central Election Management Committee revokes, ex officio, its registration (article 38, paragraph 1, of the Political Party Act), and the organization is denied the status of a political party. Also, when the party fails to win a seat or get more than two hundredths of the total effective votes in the general elections for National Assembly members, the Central Election Management Committee revokes its registration.

226. As of June 1996, seven political parties were registered. They include the New Korea Party (151 National Assembly members), the National Congress for

New Politics (79 members), the United Liberal Democrats (49 members), the Democratic Party (12 members), the United National Non-Political-Factionalists, the Christian People's Party, and the Unified Korean Party.

227. One change has been made in relation to accession to a political party. Members of the press are now permitted to join parties, whereas in the past, members of the press were denied admission in order to maintain the political neutrality of the press. The revised Political Party Act of 27 December 1993 allows, without any restrictions, these individuals to join political parties (article 6 of the Political Party Act).

Article 23

Paragraph 1 - Protection of families and homes

228. Article 36, paragraph 1, of the Constitution provides that "marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal". Men and women, of their free will, are supposed to maintain a democratic family system on an equal footing.

229. Article 779 of the Civil Code prescribes who constitutes members of the family, notably the spouse of the head of a family, blood relatives (lineal ascendants and lineal descendants, brothers and sisters, lineal descendants of brothers/sisters, brothers/sisters of lineal ascendants, lineal descendants of brothers/sisters of lineal ascendants) and their spouses. But in the social sense, the concept of a family is understood as a sphere centred around a married couple where close blood relatives live together and lead a joint life based on love and caring. The family is considered the most basic unit of society.

230. In the past, the family system of the Republic of Korea had the rather conservative character of a traditional Confucian patriarchy. With the progress of industrialization, urbanization and increased social participation of women, however, the nuclear family composed of the couple and their children replaced the extended family as the common base unit, and the family system has assumed a more democratic character respecting the dignity of each individual and equality of the sexes. It has already been stated in the initial report that the Civil Code was revised on 13 January 1990 to support this trend.

Paragraphs 2 and 3 - System of marriage

231. Under articles 800, 801, 807 and 808 of the Civil Code, any adult may freely enter into a matrimonial engagement and marry. A minor also can enter into a matrimonial engagement and into matrimony with the consent of his or her parents or guardian if he has attained 18 years of age or she has attained 16 years of age.

232. As for marriage, monogamy is guaranteed where two individuals join of their own free will; bigamy is prohibited by article 810 of the Civil Code. An application can be made to the court for an annulment of marriage when marriage was induced by fraud or duress and in cases of bigamy.

233. Marriage among close relatives is forbidden from the dysgenic point of view and traditional ideas influenced by Confucianism. Article 815 of the Civil Code declares null and void a marriage between lineal blood relatives, and collateral blood relatives within the range of third cousin. As for marriage between individuals who share the same surname and family origin, an application to the court for an annulment of that marriage may be made under article 816 of the Civil Code. There are dissenting opinions on the prohibition of marriage between individuals who share the same surname and place of origin; the possible abolition of that provision is being studied.

234. The place where a husband and wife live together shall be determined by an agreement between them (article 826, paragraph 2, of the Civil Code). The couple shall exercise the right of proxy for each other in daily household matters (article 827, paragraph 1, of the Civil Code), and the living expenses of husband and wife shall be borne jointly by them, unless a special stipulation has been made between them (article 833 of the Civil Code).

235. Husband and wife may seek divorce by agreement or unilateral application to the court. In 1994, the number of marriages and divorces reported were 304,146 and 50,960 respectively.

Paragraph 4 - Rights of the spouse

236. It was already mentioned in the initial report that the present Civil Code, effective from 1 January 1991, provides for equal rights and duties between husband and wife through joint exercise of parental authority with respect to a minor child; elimination of discrimination at inheritance; and the right to demand division of properties. Furthermore, the inheritance law was revised in December 1994. Through this revision, the criteria for gift tax and inheritance tax deductions for spouses were upgraded by a very wide margin. This signifies the recognition of reasonable property rights upon jobless spouses.

Article 24

Paragraph 1

237. It has already been confirmed in the initial report that prohibition of discrimination against children and the protection of children are duly guaranteed under article 11, paragraph 1, article 31, paragraph 2, and article 32, paragraph 5, of the Constitution, in addition to relevant provisions of the Child Welfare Act, the Labour Standards Act and the Education Act. Some additional comments will be made below.

238. Accession to the Convention on the Rights of the Child. The Republic of Korea, joining in the United Nations effort to protect children, deposited the instrument of ratification for the Convention on the Rights of the Child with the Secretary-General of the United Nations on 20 November 1991. The first report transmitted on 30 November 1994 was examined by the Committee on the Rights of the Child in January 1996.

239. Protection of working children and decrease in the number of working children. The initial report observed that article 32, paragraph 5, of the Constitution provides that "special protection shall be accorded to working

children," and that in accordance with this provision, the Labour Standards Act sets out restrictions on the working hours of children (arts. 55, 56) and prohibits the engagement of children in any harmful or dangerous work (arts. 51, 58). Moreover, in order to prevent economic exploitation of children, article 53 of the Labour Standards Act states that no parent or guardian shall be authorized to make an employment agreement on behalf of a minor: if the employment agreement may be deemed disadvantageous to a minor, the parent, guardian or the Minister of Labour may terminate it. For the observance of special provisions on child protection, 45 local labour agencies nationwide guide and supervise workplaces with more than five workers.

240. In response to these special protection clauses and increased school attendance of children, the ratio of children under 18 in workplaces with more than five full-time workers has dropped tremendously from 2.8 per cent (90,625 out of 3,219,442 total workers) in 1980 to 0.4 per cent (23,916 out of 6,167,596 workers in total) in 1995.

241. Responsibility of parents to protect children and respect for the child's views. Parents are responsible for raising children. Article 909, paragraph 1, of the Civil Code stipulates that "the child who is a minor, shall be subject to the parental authority of parents". Article 913 provides that "a person in parental authority shall have rights and duties to protect and educate his or her child". In case a person of parental authority abuses that authority or is guilty of gross misconduct, or there exists any other cogent reason for not allowing him or her to exercise parental power, or if a person in parental authority endangers his or her child by mismanagement of the child's property, the court may adjudge his or her loss of parental authority and the right of the management of the property of the child (articles 924 and 925 of the Civil Code). When the person with parental authority is representing a child on occasions in which an obligation is to be assumed requiring any act of the child, the consent of the child shall be obtained (article 920 of the Civil Code). Also, a minor with the ability to express his or her own thoughts, may conduct business acts with the approval of his or her parental authority (article 5 of the Civil Code). When the parents cannot reach agreement on matters concerning custody in cases of legal separation, a child who is more than 15 years old is consulted as to which parent he or she wishes to stay with. In case of adoption of a child aged 15 or over, the child shall not be adopted without his or her own consent.

242. Accommodation for children in need of protection. Some facilities are required to provide social protection to children who are abandoned or whose protectors are not qualified to raise them. Article 12 of the Child Welfare Act stipulates necessary protective measures for this type of child. As of 31 December 1995, 18,074 children were accommodated in 269 protective facilities.

243. Protection of children under the Minor Protection Act. The Minor Protection Act was legislated in 1961 to guide and care for minors. This Act aims to protect minors by stipulating necessary details and by prohibiting minors from smoking, drinking, and activities against social virtue. In accordance with this Act, minors are prohibited from smoking and drinking and

from gaining access to certain places including saloon bars and gambling houses. Minors are also not permitted to go into areas designated by the police as off-limits, to prevent misdemeanors by minors.

244. Protection of minors from violence, maltreatment and sexual exploitation. The Criminal Code strives to protect minors from sexual exploitation and violence. Article 287 provides that "a person who kidnaps a minor by force or inveiglement shall be punished by penal servitude for not more than ten years". Article 242 states that "a person who, for the purpose of earning profit, induces a minor to engage in sexual intercourse, shall be punished by penal servitude for not more than three years or by a fine not exceeding 15 million Won (approximately US$ 19,000)". Article 34 of the Child Welfare Act stipulates punishment for the following acts: forcing a child to perform obscene acts or mediating such activity; having a child under 14 engage in entertaining activities in certain places, including saloon bars; making a child beg; and maltreating a child who is under his or her protection or supervision.

245. Protection of children born out of wedlock. The Civil Code provides equal protection for legitimate and illegitimate children. Children born out of wedlock are protected at first by the establishment of legal family relations. This is established through the recognition of the natural father or mother (articles 855 and 859 of the Civil Code). In case it is not possible to obtain recognition, a child may bring a suit against his or her natural father or mother to demand recognition (article 863 of the Civil Code). Recognition shall be effective retroactively as from the time of birth (article 860 of the Civil Code). As a consequence of establishing a family relationship, illegitimate children are treated equally with legitimate children in support and inheritance. A child born out of wedlock shall be deemed to be a child born during marriage from the time his or her parents marry (article 855 of the Civil Code).

Paragraph 2 - Name of the child

246. Concerning the registration and surname of a child, the Civil Code provides that a child shall take his or her father's surname, the family origin, and enrol in the father's family registry. In the case of a child whose father is not recognized, his or her mother's surname and family origin are taken, and the child is enrolled in the mother's family registry. However, a child whose father and mother are unknown, with approval of the court, may create a new surname and origin of surname, and establish a new family.

247. Article 49 of the Family Registration Act requires reporting of birth within one month. A birth report is established by submitting application papers to the administrative office at the place of birth. For in-wedlock births, the child's father or mother has the obligation to file a birth report. For birth out of wedlock, the child's mother is responsible for the birth report (article 51 of the Family Registration Act). As for foundlings, the head of the relevant local administrative office shall, upon authorization of the court, establish a surname and place of origin, and decide on a name and address under which the child is to be registered (article 57 of the Family Registration Act).

Paragraph 3 - Nationality of the child

248. Children born out of wedlock, foundlings discovered in the Republic of Korea and children of the stateless acquire the nationality of the Republic of Korea in accordance with article 2 of the Nationality Act. Therefore, the following persons shall be nationals of the Republic of Korea: a person whose father is a national of the Republic of Korea at the time of his or her birth; a person whose father has died before his or her birth and who was a national of the Republic of Korea at the time of death; a person whose mother is a national of the Republic of Korea, if his or her father is unknown or has no nationality; a person who is born in the Republic of Korea and whose parents are unknown or have no nationality (art. 2, para. 1). In addition, all foundlings discovered in the Republic of Korea shall be presumed to have been born in the Republic of Korea (art. 2, para. 2).

Article 25

249. The principle that sovereignty resides in the people is declared in article 1, paragraph 2, of the Constitution, which stipulates that "the sovereignty of the Republic of Korea shall reside in the people, and all State authority shall emanate from the people". Under this principle, citizens are entitled to directly participate in the formation of the national will through: provisions on national referendums on important policies relating to the national destiny (article 72 of the Constitution); proposed amendments to the Constitution (article 130, paragraph 2, of the Constitution); indirect participation in public duties through representatives elected by exercise of the right to vote (article 24 of the Constitution); and the exercise of their right to hold public office (article 25 of the Constitution).

Overall local elections

250. With regard to the performance of public duties through the exercise of the right to vote, one of the major changes in the Republic of Korea is the election of the head and council members of local governments. The establishment of local autonomy to assure participation of local residents in local administration was carried out in the Republic of Korea from 1949 to 1961. This practice was suspended, however, during the military regime and not renewed until arrangements were made for the direct election of local council members in 1991. This was extended to heads of local governments, resulting in the complete restoration of the citizen's right to participate. Elections were held on 27 June 1995 under the Public Office Election and Unfair Election Prevention Act for the following government offices: head of the local government, i.e. a Special City, 14 metropolitan cities and provinces; 230 primary areas of Shi (city), Kun (county) and Ku (borough); and for a total of 5,715 local council members, i.e. 931 greater area-level and 4,541 primary area-level elections.

Enactment of the Public Office Election and Unfair Election Prevention Act and its main contents

251. The Public Office Election and Unfair Election Prevention Act was legislated and promulgated on 16 March 1994 to provide a legal basis for the prevention of unfair elections. It also aims to promote better understanding

of the electoral system and to balance the administration of each election through the systematization of diverse acts such as the Presidential Election Act, the National Assembly Member Election Act, and the Local Council Members Election Act into a single election legislation. The Act states in article 1 that "the purpose of this Act is to hold fair elections in accordance with the free will of the citizens and democratic procedures, and to contribute to the development of democratic politics through the prevention of election-related unfairness". It stipulates, in detail, various matters concerning the method and procedures to be followed during election.

252. The right to vote is granted to citizens over the age of 20. The minimum age for electoral eligibility for citizens is 40 for President and 25 for members of the National Assembly, local councils and head of local government. However, the right to vote and electoral eligibility are denied to individuals ruled to be incompetent by the court or who have not finished serving a sentence no less severe than imprisonment.

Guarantee of universal, equal, direct and secret ballot

253. Article 41, paragraph 1, and article 67, paragraph 1, of the Constitution declare the principle of universal, equal, direct and secret ballot. The concrete terms for application of the principle can be found in the Public Office Election and Unfair Election Prevention Act which stipulates the exercise of a single vote per person (art. 146) and the guarantee of secrecy (art. 167).

254. Regarding the equal ballot, the Constitutional Court has expressed the opinion that "according to the constituency chart of the Public Office Election and Unfair Election Prevention Act, 'Haeundae-ku, and Kijang-kun Constituency of Pusan city' and 'Kangnam-ku B-Constituency of Seoul' exceed the nationwide constituency average of 175,460 inhabitants by more than the allowed 60 per cent variation, and therefore, demarcation of the two constituencies, as a derogation of the legislative discretion of the National Assembly and violation of voter equality principle, is unconstitutional".

Article 26

255. The preamble to the Constitution states that "We the people of Korea ... [have] determined to ... afford equal opportunities to every person ... in all fields, including political, economic, social and cultural life". Meanwhile, article 11, paragraph 1, of the Constitution provides that "all the citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status". Equality before the law and equal protection of law is made clear in those provisions.

256. Concrete contents have already been illustrated in detail in the relevant sections of the initial and this report, inter alia, the section on article 2 of the Covenant.

Article 27

257. In the Republic of Korea, as already mentioned in the initial report, every individual enjoys the right to appreciate one's own culture, to profess and practise one's own religion and to use one's own language. Although the minorities in the strict sense of article 27 of the Covenant do not exist in the Republic of Korea, nationalized overseas Chinese or other non-Korean nationals in the Republic of Korea enjoy their respective culture, religion and language, in accordance with the Constitution and the Covenant.

258. In November 1991, the Republic of Korea ratified the Convention on the Rights of the Child. With the acceptance of obligations in regard to provisions on protecting the rights of minority or native children (article 30 of the Convention), the Republic has reaffirmed its basic policy of protecting minorities' rights.